



# Private Client Comparative Guide

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## 1. Legislative framework

### 1. 1. Which legislative provisions govern private client matters in your jurisdiction?

France

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As France is a civil law country, private client matters are primarily governed by legislation transposed in codes.

As a general rule, French legal aspects are governed by the provisions of the Civil Code and tax matters are ruled by the Tax Code.

As a general rule, a distinction is made depending on the nature of the connection of the person with France (habitual residence/domicile/residence). Citizenship is taken into consideration only under certain circumstances. However, it is not an essential criterion to link a person to France.

The situs of assets may, however, be seen as a connecting factor with France from a tax standpoint. One potential pitfall in this regard is that the shares of a company with its registered office outside France may qualify as French located assets merely because that company owns (directly or indirectly) real estate located in France.

### 1. 2. Do any special regimes apply to specific individuals (eg, foreign nationals; temporary residents)?

France

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From a legal standpoint, there is no distinction between French nationals and nationals of other EU member states. Discrimination clauses included in international treaties signed between France and other states may also affect any particularities which apply to French nationals only.

The concept of ‘temporary residents’ does not exist in France as such. However, new French tax residents benefit from certain advantages in their first five or six years of residence in France.

As a general rule, the sole distinction which may apply depends on whether an individual has his or her habitual residence (for legal purposes) and/or his or her tax domicile/residence in France (from a tax point of view).

### 1. 3. Which bilateral, multilateral and supranational instruments in effect in your jurisdiction are of relevance in the private client sphere?

France

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Several multilateral treaties and European directives, which deal in particular with legal union, marriage, divorce, succession, trusts and tax matters, may be relevant in the private client sphere.

## 2. Taxation

2. 1. On what basis are individuals subject to tax in your jurisdiction (eg, residence/domicile/nationality)? How is this determined?

France

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As a general rule, nationality has no impact on the tax situation of individuals in France, except in specific circumstances where a tax treaty provides otherwise (eg, the tax treaties signed between the United States and France dealing with income tax, gift and inheritance taxes, which provide for different treatment when US citizens are involved).

As a general rule, individuals domiciled as defined by Article 4B of the Tax Code (or resident of France as defined by the applicable tax treaty) are subject to French taxes on their worldwide income or assets.

Individuals who are not domiciled or non-resident of France for tax purposes are subject to French taxes only on their assets (either income or market value) deemed to be located in France.

The definition of French located assets is set out in Article 750ter of the Tax Code.

The definition of 'domicile' for tax purposes, which applies in the same way for all French taxes, is set out in Article 4B of the Tax Code, which provides four alternative tests:

- He or she has his permanent home ('*foyer*') in France;
- His or her primary place of residence is in France;
- He or she performs his or her main activity in France or
- He or she has the centre of his economic interests in France.

The concept of residence is defined by each tax treaty signed by France. Approximately 130 treaties dealing with income tax and 35 treaties applicable to inheritance tax have been signed by France. They do not always follow the definition of residence proposed by the Organisation for Economic Co-operation and Development Treaty model.

For the sake of simplicity, the terms 'resident' and 'non-resident' used in this Q&A mean indifferently 'domiciled' and 'non-domiciled' as defined by Article 4B of the Tax Code and 'resident' and 'non-resident' as provided by tax treaties signed by France.

2. 2. When does the personal tax year start and end in your jurisdiction?

France

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The personal tax year corresponds, as a general rule, to the calendar year.

Individuals who transfer their tax residence to France become subject to French taxes on their worldwide income from the first day of their arrival.

Exit tax is due (in respect of certain financial assets) the day before their departure from France.

However, wealth tax on real estate (*impôt sur la fortune immobilière* (IFI)) is due on their market value on

1 January of each year.

2. 3. With regard to income: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France

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***(a) What taxes are levied and what are the applicable rates?***

All income received by the household (*'foyer'*) is as a general rule subject to income tax, with few exceptions.

French residents are subject to income tax on their worldwide income and non-resident on their French source income.

The tax treatment is different depending on each category of income received.

Business profits, non-commercial profits, agricultural profits, rental income from real estate, wages and pensions are subject to a progressive rates scale, with a marginal rate of 45% (for the fraction of taxable income over €157,809 for 2020). All income received by the members of the household (as a general rule, the two parents and their minor or dependent children) are added to determine the amount subject to the progressive rates scale.

In addition to income tax, so-called 'social contributions' are due by French resident individuals, at a rate depending on the nature of each income (between 3.6% and 17.2%).

Dividends, interest and ordinary income on financial assets are subject to a flat tax of 30% (12.8% corresponding to income tax and 17.2% to social contributions).

Non-resident individuals are not, as a general rule, subject to social contributions on their French source income, except on rental income and capital gains derived from the sale of real estate located in France and shares of *sociétés à prépondérance immobilière* (SPIs) (see question 2.4(a)).

A supplementary contribution also applies to resident and non-resident taxpayers receiving high annual income. The rate amounts to:

- 3% for the fraction of income between €250,001 and €500,000 for single taxpayers (between €500,001 and €1 million for couples); and
- 4% for the fraction of income over €500,001 for single taxpayers (over €1 million for couples).

***(b) How is the taxable base determined?***

The rules on the determination of the taxable base are different for each category of income.

As a general rule, expenses incurred for receiving the income are deductible for the determination of the taxable basis.

***(c) What are the relevant tax return requirements?***

A large category of income is subject to a withholding tax levied on their payment, which is considered as a pre-payment of income tax (for resident taxpayers).

An annual income tax return must be filed by each household (composed, as a general rule, of the two parents and their minor or dependent children). A household annual tax return should be filed before the end of May of each year, reporting income received by its members during the precedent calendar year. The same delay applies for resident and non-resident taxpayers.

Households that are subject to wealth tax on their real estate – the so-called IFI (see question 2.7) – should add their wealth tax return as an appendix to their income tax return.

***(d) What exemptions, deductions and other forms of relief are available?***

Different deductions or relief may apply, such as those in relation to:

- gifts made to charities;
- childcare expenses;
- expenses in relation to energy transition for the home; and
- certain investments, such as forest investments.

2. 4. With regard to capital gains: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France

Tirard Naudin

***(a) What taxes are levied and what are the applicable rates?***

Capital gains realised on the sale of real estate are subject to tax at the global rate of 36.2% for 2020 (income tax at a flat rate of 19% and social contributions at a rate of 17.2%). However, rebates apply taking into consideration the duration period of ownership (see question 2.4(d)).

The sale of shares of a pass-through corporation (French or foreign) that owns real estate located in France as its main assets (qualified as a *société à prépondérance immobilière* (SPI)) is subject to the same regime as the sale of real estate.

The same treatment applies for residents (on the sale of their worldwide real estate and SPI) and non-residents (on the sale of their real estate located in France and SPI).

An additional tax (*taxe sur certaines plus-value immobilière*) also applies assessed on capital gains on real estate and shares of SPI exceeding €50,000 realised by both residents and non-residents. It is levied on the whole amount of the capital gains at progressive rates varying from 2% to 6% (for capital gains exceeding €260,000).

The same rate of 36.2% also applies to capital gains realised by French residents on the sale of precious

metals, jewellery and artefacts, provided they do not elect for the application on the sale price of a flat tax amounting to 11% for precious metals and 6% for jewellery and artefacts.

Capital gains on shares and securities (and crypto-assets) are subject to a 30% flat tax (12.8% income tax and 17.2% social contributions) if realised by French resident taxpayers.

Shares, securities and financial investment are also, as a general rule, subject to an exit tax upon the transfer of residence of a taxpayer outside France.

Capital gains realised by non-resident minority shareholders on French corporations that are subject to corporation tax are exempt from French tax.

Unless a tax treaty provides otherwise, capital gains from the sale of securities or shares of corporations are taxable only when realised by a non-resident shareholder who owns (or owned during the five previous years), together with his or her spouse, ascendants and descendants, more than 25% of the shareholding in the sold company.

***(b) How is the taxable base determined?***

As a general rule, the taxable base is determined by the difference between the sale price and the acquisition price.

The acquisition price may be increased by acquisition fees, transfer duties or gifts/inheritance taxes and sales fees, according to rules that depend on the nature of the capital (property, shares, other movable assets when taxable).

***(c) What are the relevant tax return requirements?***

As ordinary income, capital gains may be subject to a withholding tax levied upon the sale of assets. They should also be reported in the annual income tax return filed by the household (see question 2.3(c)).

***(d) What exemptions, deductions and other forms of relief are available?***

Capital gains on the sale of the main residence are fully tax exempt.

The taxable basis of capital gains on the sale of real estate and SPI shares for income tax purposes is reduced by yearly allowances applying from the sixth year of ownership. The yearly allowance is 6% from the sixth year of ownership up to the 21st year and 4% for the 22nd.

As a consequence, the sale of real estate and SPI shares after 22 years of ownership benefits from a full exemption from income tax. However, social contributions remain due. Capital gains are fully exempt from income tax and social contributions only after 30 years of ownership.

Sales by residents and non-residents of movable assets, other than precious metals, jewellery and artefacts, are fully exempt.

Sales of precious metals, jewellery and artefacts made by non-residents are also fully exempt.

Exit tax does not apply to individuals who resided in France less than six years before transferring their tax residence outside France.

Capital gains on shares and securities realised by non-resident minority shareholders on the sale of shares of French corporations are fully exempt, as explained in question 2.4(a).

2. 5. With regard to inheritances: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France  
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***(a) What taxes are levied and what are the applicable rates?***

In France, gift tax is due on *inter vivos* gifts and inheritance tax is due by legatees and/or heirs upon the death of a deceased person.

French gift tax and/or inheritance taxes are due when either:

- the donor (or deceased) is French tax resident (as defined by Article 4B of the Tax Code (see question 2.1) upon the gift or his or her death;
- the donee (the legatee or heir) is French tax resident upon the gift (or death); or
- the transferred asset (by gift or death) is deemed to be located in France as defined by Article 750ter of the Tax Code.

As mentioned before, only 35 treaties dealing with inheritance tax have been signed by France and eight treaties apply to gift tax.

The rates of gift and inheritance tax vary from 5% to 45% above €1,805,677 (for 2021) between parents and children (after deduction of an allowance of €100,000 for each child). They increase to 60% in the absence of a blood relationship between the deceased and the heirs.

***(b) How is the taxable base determined?***

As a general rule, gift tax is calculated on the market value of the gifted asset upon the gift.

However, manual gifts (*'dons manuels'*) are subject to gift tax when they are revealed to the French tax authorities. As a consequence, gift tax is calculated on the market value of the gifted asset either at the time of the gift or when the gift is revealed.

Some deductions are allowed which are more restrictive than for inheritance tax purposes.

Inheritance tax due upon the death of a French resident person is computed on the worldwide wealth of the deceased. As a general rule, all debts due by the deceased and paid by the successors are deductible for inheritance tax purposes.

Inheritance tax due by a legatee or heir who is a resident of France upon the death of a non-resident person is due on the assets transferred to such legatee or heir. Only debts due by the deceased and paid by the French resident successor, as well as inheritance tax paid abroad on the transferred assets, are deductible for inheritance tax purposes.

Inheritance tax due on assets deemed to be located in France by non-resident successors upon the death of a non-resident deceased are computed on the market value of the transferred assets upon death. Inheritance tax paid abroad on such assets may be deductible under certain conditions.

***(c) What are the relevant tax return requirements?***

A gift tax return should be filed within 30 days of the gift and gift tax should be paid at the same time. Gifts of real estate located in France should be registered with a French ‘*notaire*’ who collects gift tax.

Manual gifts are subject to gift tax when they are revealed.

An inheritance tax return must be filed by the legatee/heirs within six months of the death, if the person was deceased in France, or within 12 months if otherwise.

***(d) What exemptions, deductions and other forms of relief are available?***

Surviving spouses and civil partners (under certain conditions) are fully exempt from inheritance tax, without limit or conditions.

Under certain conditions, shares of French corporations may benefit from a 75% exemption, provided that the legatees or heirs committed to hold the transferred shares for a certain period (*‘pacte Dutreil’* – four or six years, as a general rule).

New French residents benefit from a total exemption of gift/inheritance taxes on assets gifted/inherited from abroad during their first five years of French residency.

2. 6. With regard to investment income: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France  
Tirard Naudin

***(a) What taxes are levied and what are the applicable rates?***

Up until 2017 (included), wealth tax (*impôt de solidarité sur la fortune* (ISF)) was due on the market value of assets owned by French tax residents on 1 January of each year. Non-residents were subject to ISF on French assets only.

ISF has now been repealed and replaced by another wealth tax, which only applies to real estate – the IFI (see question 2.7).

***(b) How is the taxable base determined?***

The market value of assets on 1 January of each year was taken into consideration. All debts due by the taxpayer on assets subject to ISF unpaid on 1 January (with very few limitations) were deductible for ISF purposes.

***(c) What are the relevant tax return requirements?***

An annual ISF tax return was due every year before 15 June.

***(d) What exemptions, deductions and other forms of relief are available?***

Business assets were exempt, as well as certain investments, such as forest investments. A 75% exemption also applied to shares of companies which the taxpayers committed to hold for a six-year period (*'Pacte Dutreil'*).

2. 7. With regard to real estate: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France

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***(a) What taxes are levied and what are the applicable rates?***

IFI is due every year on real estate and rights that are directly or indirectly owned by the household.

French residents are subject to IFI on their worldwide real estate, regardless of the structure of ownership (including trusts). Non-residents should also pay IFI on real estate located in France directly or indirectly owned through French or foreign corporations or entities (including trusts).

IFI is payable by households whose private real estate wealth, after the deduction of compulsory debts, exceeds a certain limit on 1 January each year (€1.3 million for 2021).

The IFI payable for 2021 is determined by applying to the household's taxable assets over €800,000 the following sliding scale:

- Up to €800,000: 0%
- €800,000 to €1.3 million: 0.5%
- €1.3 million to €2.57 million: 0.7%
- €2,570,001 to €5 million: 1%
- €5,000,001 to €10 million: 1.25%
- More than €10 million: 1.5%

***(b) How is the taxable base determined?***

The IFI taxable basis corresponds to the market value, as of 1 January each year, of real estate, real estate rights and the market value of the shares of companies owning (directly or indirectly) real estate corresponding to the market value of the underlying properties they own.

Only debts incurred for the acquisition, refurbishment, repairs or maintenance of the real estate are deductible, under certain limited conditions. Family loans are deductible only if their terms and conditions are comparable to those of bank loans. 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 1 January each year. Some limitations of deduction also apply when the IFI taxable basis of

the household exceeds €5 million.

***(c) What are the relevant tax return requirements?***

An IFI tax return should be filed (as an appendix to the income tax return) before the end of May each year.

***(d) What exemptions, deductions and other forms of relief are available?***

IFI is not due, subject to certain conditions, on real estate used for business purposes.

A 30% allowance applies to the market value of the main residence of the French resident household.

The total amount of income tax, IFI and some specific local taxes due by a French resident household cannot exceed 75% of its reference tax income. The authors consider that this measure, which does not apply to non-resident households, should be seen as discriminatory.

2. 8. With regard to any other direct taxes levied in your jurisdiction: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France

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***(a) What are they and what are the applicable rates?***

Several local direct taxes apply in France, such as:

- property tax on developed land;
- property tax on undeveloped land; and
- housing tax.

***(b) How is the taxable base determined?***

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 estate – whether an individual or a corporate entity – must pay local property tax on any developed or undeveloped real estate in the municipality (commune) where it is located.

***(c) What are the relevant tax return requirements?***

No returns need be filed for property tax purposes unless it relates to new real estate or a reconstructed property.

***(d) What exemptions, deductions and other forms of relief are available?***

*Taxe d'habitation* on the main residence is being progressively repealed, with a full suppression starting 2023.

Some reliefs in matters of *taxe foncière* may be decided by local authorities on a case-by-case basis, in order

to attract new industries or investors.

2. 9. With regard to any indirect taxes levied in your jurisdiction: (a) What taxes are levied and what are the applicable rates? (b) How is the taxable base determined? (c) What are the relevant tax return requirements? and (d) What exemptions, deductions and other forms of relief are available?

France

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***(a) What are they and what are the applicable rates?***

Transfer duties levied in France on real estate and shares should be mentioned in the private client context.

As explained in question 2.5, transfers of assets for no consideration are subject to gift or inheritance tax. In addition, sales of assets may be subject to transfer duties. Their rates differ depending on the nature of assets transferred.

Sales of real estate located in France are subject to transfer duties at rates which vary depending on the location of the real estate. They may range up to 6.5%. They are collected by a ‘*notaire*’ who should be appointed to register sales of real estate.

Sales of shares (French or foreign) are also subject to transfer duties. The applicable rates differ depending on:

- whether the company qualifies as a *société à prépondérance immobilière* (SPI); and
- the social form of the company.

Sales should be registered within 30 days following their realisation and transfer duties should be paid at the same time.

Sales of shares (‘*actions*’) of limited liability corporations, such as *sociétés anonymes* which do not qualify as SPIs, are subject to 0.1% transfer duties.

Sales of shares (‘*parts sociales*’) of *sociétés à responsabilité limitée* and *sociétés civiles* which do not qualify as SPIs are subject to 3% transfer duties.

Sales of SPI shares signed in France should be registered with the French tax authorities within 30 days and the corresponding 5% transfer duties paid at the same time.

Sales of SPI shares are subject to transfer duties at the rate of 5% computed on the sale price. When the sale agreement is signed outside France, it should be reiterated by a French ‘*notaire*’ within 30 days. Transfer duties are then collected by the *notaire*.

***(b) How is the taxable base determined?***

Transfer duties are computed on the sale price of assets.

***(c) What are the relevant tax return requirements?***

Depending on the nature of assets and the place of signature of the sale agreement, transfer duties are either collected by the French *notaire* or paid by one of the parties when the agreement is registered within the French tax authorities.

***(d) What exemptions, deductions and other forms of relief are available?***

As a general rule, contributions in kind of assets for no consideration are exempt from transfer duties.

Sales of quoted shares which are not confirmed by a written agreement also benefit from a transfer duty exemption.

### 3. Succession

3. 1. What laws govern succession in your jurisdiction? Can succession be governed by the laws of another jurisdiction?

France  
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French law governs, as a general rule, the succession of persons who have their habitual residence in France.

However, by virtue of the EU Succession Regulation (650/2012), applicable since 17 August 2015, individuals with their habitual residence in France may choose the law of their country of nationality to govern their succession.

3. 2. How is any conflict of laws resolved?

France  
Tirard Naudin

Since the EU Succession Regulation entered into force, the French courts should apply the succession law determined under that regulation (see question 3.1). The courts may accept the *renvoi* back to the *lex situs* (ie, the law of situation of a property) only when:

- the law of succession is that of the deceased's habitual domicile at the time of his or her death and no election for another law was made;
- the law of succession is that of a 'third state' (including Denmark, Ireland and the United Kingdom) where the EU Succession Regulation does not apply; or
- the applicable law of succession refers to another law of a state where the EU Succession Regulation applies or to a third state which would apply its domestic law.

3. 3. Do rules of forced heirship apply in your jurisdiction?

France  
Tirard Naudin

France applies forced heirship rules under which a certain portion of the estate cannot be freely disposed by a person by lifetime gift or will other than to children and 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, as follows:

- One child: one-half;
- Two children: one-third; and
- Three children or more: one-quarter.

As a general rule, the surviving spouse can choose either the ownership of 25% of the estate or the usufruct of the whole estate.

### 3. 4. Do the rules of succession rules apply if the deceased is intestate?

France

Tirard Naudin

Forced heirship rules apply whether the deceased is intestate or not.

### 3. 5. Can the rules of succession be challenged? If so, how?

France

Tirard Naudin

There are different ways to limit the application of forced heirship rules. However, some of them should be carefully used:

- Electing for the succession law of citizenship may allow for forced heirship rules to be avoided;
- Spouses may elect for a universal community regime under which all assets acquired by the spouses before and after marriage are jointly owned by the couple and excluded from the succession of the first deceased;
- A property conveyance with a clause allocating some assets to a co-owner (*'clause de tontine'*) entails the same effect as a joint tenancy with a survivorship right; and
- Transferring certain assets into an irrevocable trust governed by the law of a jurisdiction that does not recognise forced heirship provisions may limit the application of forced heirship rules.

## 4. Wills and probate

### 4. 1. What laws govern wills in your jurisdiction? Can a will be governed by the laws of another jurisdiction?

France

Tirard Naudin

Wills established by French nationals with their habitual residence in France are governed by the Civil Code.

Wills established under French law by French nationals and foreign national electing for the application of the Civil Code are also subject to its provisions.

However, wills established by persons who are not French nationals, who do not elect for the application of the French law and who do not have their habitual residence in France are governed by the laws of another

jurisdiction.

#### 4. 2. How is any conflict of laws resolved?

France

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See question 3.2.

#### 4. 3. Are foreign wills recognised in your jurisdiction? If so, what process is followed in this regard?

France

Tirard Naudin

In accordance with the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, French law permits a foreign person who is not domiciled in France to make a will under the law of any country, provided that it is valid under the law of that country.

#### 4. 4. Beyond issues of succession discussed in question 3, are there any other limitations to testamentary freedom?

France

Tirard Naudin

As a general rule, French civil law prohibits covenants on future inheritance.

#### 4. 5. What formal requirements must be observed when drafting a will?

France

Tirard Naudin

There are two main forms of wills under French law:

- A holographic will must be handwritten by the testator. It should be dated and signed. It need not be witnessed; and
- An authentic will is made in the presence of a '*notaire*' and two witnesses.

#### 4. 6. What best practices should be observed when drafting a will to ensure its validity?

France

Tirard Naudin

It is absolutely essential for the testator to be properly advised before drafting a will – specifically, when family members are resident in different states and/or assets are located in various countries.

It is also important to identify appropriate solutions when the state of the last habitual residence of the testator is unknown at the time of the determination of his or her estate planning.

Finally, estate planning structures should be organised in a proper way to be easily modified depending on:

- the modification of wishes of the testator;
- the alterations in the family's relationship; and
- the evolution of the family wealth.

#### 4. 7. Can a will be amended after the death of the testator?

France

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It is not possible to amend a will after the testator's death.

#### 4. 8. How are wills challenged in your jurisdiction?

France

Tirard Naudin

There is a tendency for potential heirs to challenge wills by the testator after his or her death in order to claim that he or she had his or her habitual residence in France upon death.

The aim of such actions is to benefit from the forced heirship rules set out in the Civil Code, which are particularly generous to the children compared with the rules applicable in other countries and notably in common law jurisdictions.

#### 4. 9. What intestacy rules apply in your jurisdiction? Can these rules be challenged?

France

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See question 3.3.

### 5. Trusts

#### 5. 1. What laws govern trusts or equivalent instruments in your jurisdiction? Can trusts be governed by the laws of another jurisdiction?

France

Tirard Naudin

The concept of trust is alien to the Civil Code. As a consequence, trusts set up by or for the benefit of French residents should be governed by the law of a common law jurisdiction.

#### 5. 2. How is any conflict of laws resolved?

France

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As the trust is alien to the Civil Code (see question 5.1), there is no case in which a conflict of laws might

arise.

### 5. 3. What different types of structures are available and what are the advantages and disadvantages of each, from the private client perspective?

France

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There is no proper translation of ‘estate planning’ in French. In the French culture, succession planning has long been considered somehow unnecessary, because the provisions of the Civil Code govern succession. As a consequence, there are no specific estate planning tools available in France: a classic approach would be to use holding companies and drafting corresponding shareholder agreements.

That said, a life insurance policy is a unique and very popular tool in France, despite the fact that:

- it is not very appropriate to protect either fragile family members or sensitive assets; and
- it cannot be used as an asset protection instrument after the passing of the subscriber.

As a consequence, because no French structures are available for estate planning purposes, we have no choice other than to use tools proposed in other jurisdictions, such as trusts and, under certain circumstances, foundations.

### 5. 4. Are foreign trusts recognised in your jurisdiction? If so, what process is followed in this regard?

France

Tirard Naudin

The French courts recognise the effects in France of common law trusts, provided that they comply with the mandatory rules of French law.

### 5. 5. How are trusts created and administered in your jurisdiction?

France

Tirard Naudin

Trusts can be created and administered, even in France, provided that they are governed by a law of a jurisdiction in which the concept is recognised.

### 5. 6. What are the legal duties of trustees in your jurisdiction?

France

Tirard Naudin

No specific legal duties are provided under French law with regard to the trustee. This is because the concept of trust is unknown in France. Fortunately, however, this does not prevent French residents from using foreign trusts.

Since 2012, several tax reporting requirements incumbent to the trustees (French or foreign) are due to the French tax authorities where at least one of the following conditions is met:

- The settlor is a resident of France (as defined by Article 4B of the Tax Code (see question 2.1);
- At least one of the beneficiaries is French resident;
- One of the assets of the trust is deemed to be located in France (under Article 750<sup>ter</sup> of the Tax Code; or
- The trustee is a resident of France.

In addition, a decree dated 12 February 2020 added two new types of connecting factors with France:

- The trustee acquires French real estate; or
- The trustee has a ‘business relationship’ with France.

The same French tax reporting obligations apply regardless of the trust’s characteristics and the place of residence of the trustees.

Annual returns and event returns should be filed by the trustees to inform the French tax authorities of the identity of the trust’s actors (settlors, trustees and beneficiaries), as well as the content and value of assets comprising the trust’s fund.

Under certain circumstances, trustees may also be liable for the payment of French taxes relating to the assets held in trusts.

## 5. 7. What tax regime applies to trusts in your jurisdiction? What implications does this have for settlors, trustees and beneficiaries?

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**Income tax:** Trustees of foreign trusts may be subject to French withholding tax, corporation tax or income tax, depending on their status and on the nature of French source income that the trust may receive.

The distribution of income from the trust (qualifying as dividends from abroad) received by French resident beneficiaries is subject to the 30% flat tax mentioned in question 2.3(a) (Article 120.9 of the Tax Code).

Under certain circumstances, the controlled foreign corporation rules may apply where:

- the trust is considered as artificial or as having a purely tax-driven purpose; or
- the trustee is resident of a non-cooperative state.

In such cases, 125% of the undistributed income realised by the trust is taxable in the settlor’s or beneficiaries’ hands (Article 123<sup>bis</sup> of the Tax Code).

**Impôt sur la fortune immobilière’ (IFI):** For IFI purposes, original settlors and, after they die, beneficiaries that are ‘deemed settlors’ are subject to IFI on real estate indirectly owned by the trusts (see question 2.7) as if no trust existed.

Where the real estate is not properly reported for IFI purposes by the settlors or deemed settlors, the trustee is liable for the payment of an annual *sui generis* tax amounting to 1.5% of the taxable market value of the

real estate indirectly owned by the trust.

**Gift and inheritance taxes:** The transfer of assets from the settlors to trusts is not treated as a taxable event for French gift tax purposes.

However, gift tax may be due on trust distributions benefiting a beneficiary who is not the settlor of a given trust, assuming that either the settlor or the beneficiary is a resident of France.

Inheritance tax is due upon the death of the original settlor or, after he or she has died, upon the death of one of the beneficiaries who are deemed settlors of the trust.

The applicable rate of gift and inheritance tax, which depends on the relationship between the settlor (or deemed settlors) and the beneficiaries appointed by the trustee, will apply for the computation of gift and inheritance tax due in France.

However, if the trustee does not apportion the trust's fund to designated beneficiaries, inheritance tax is due at the flat rate of 60%.

In a nutshell, the same tax mechanism applies for IFI and inheritance tax purposes as if no trust existed: the trustee is liable for such taxes (at the marginal tax rates) only where the trust's assets are not properly reported in France by the settlor or beneficiaries of the trusts.

To conclude, trusts are considered as tax neutral from a French tax standpoint. As a consequence, they are used in a French context for estate planning purposes only.

## 5. 8. What reporting requirements apply to trusts in your jurisdiction?

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The trustees are subject to annual and event-based returns. The settlor should report taxable real estate for IFI purposes. Beneficiaries should report income tax upon receiving a distribution of income.

Finally, beneficiaries appointed by the trustee as deemed settlors should report the apportionment of trust assets decided by the trustee for inheritance tax purposes upon the death of the settlor or upon the death of beneficiaries that are deemed settlors.

## 5. 9. What best practices should be observed in relation to the creation and administration of trusts?

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Corporations, entities and trusts that are located in uncooperative countries should be avoided. This situation will result in:

- a 75% withholding tax on French source income;
- the application of controlled foreign corporation rules; and
- the suspicion of the French tax authorities.

In order to be efficient, any structure of ownership that uses trusts should be carefully designed, taking into consideration:

- the family members' personal situation;
- the importance of the wealth;
- the nature and location of the assets; and
- the objectives of the family.

All trusts, companies and/or entities used in the ownership structure should be properly set up and managed. They should have enough substance. They should also have a purpose other than merely reducing or avoiding taxes either in France or in other countries.

## 6. Trends and predictions

6. 1. How would you describe the current private client landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

France  
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The development of the exchange of information between states has fundamentally modified the current private client landscape. Clients are searching for simple but efficient solutions allowing them to organise their wealth and transfer it to whom they wish in total transparency. They want to anticipate and have certainty with regard to both tax authorities and unfriendly predators.

**In the recent years, reforms have been initiated to attract foreign investment in France such as the reform of capital taxation.**

The flat tax on dividends and financial income (amounting to 30% for French residents and 12.8% for non-residents), as well as the removal of wealth tax on movable assets, both attract foreign investments in France.

## 7. Tips and traps

7. 1. What are your top tips for effective private client wealth management in your jurisdiction and what potential sticking points would you highlight?

France  
Tirard Naudin

Do not hesitate to blend common law and civil law concepts together in order to arrive at original estate planning structures.

Using various estate planning tools from different systems opens up new areas to achieve the objectives of, and circumvent the constraints imposed by, sophisticated and demanding clients.



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