France

International Estate Planning Guide

Individual Tax and Private Client Committee

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A. Will Formalities and Enforceability of Foreign Wills

1. Will Formalities

A testator may freely transfer his property and rights by executing a will that can be revoked at any time (art. 895 French Civil Code). However, if French succession law is applicable to his estate and if he has descendants or in the absence of descendants, if he has a spouse, the legacies will have effect only in respect of a portion of his estate called the disposable part ("*quotité disponible*").

In France, the most commonly used form of will is the holograph will ("*testament olographe*") due to its simplicity. The holograph will is a private deed that must be written in the testator's own hand, dated and signed by the testator. No further formalities are required. However, it is advisable to store it with a Notary who will register its existence in his office on the central Wills Register ("*Fichier National des Dispositions Testamentaires*") to ensure that it is not overlooked when dealing with the inheritance.

In contrast, the notary-recorded will ("*testament authentique*") is subject to strict formalism. It must be personally dictated by the testator in the presence of either two notaries or one notary and two witnesses. The sole interest in setting up a *testament authentique* lies in the fact that it is much more difficult to contest its validity.

The secret will ("*testament mystique*") is a private document that is handwritten or typewritten either by the testator or by a third person. In the latter case, the testator must specify to the Notary that he verified its contents. It is placed in an envelope that is then closed, stamped, sealed up and presented to a Notary and two witnesses. The Notary will note this in his official records. The use of the *testament mystique* is not very common in France.

The international will ("*testament international*") was created by the Washington Convention of 26 October 1973 that entered into force in France on 1 December 1994. Its interest consists in the fact that the will is valid in every contracting state subject to the condition that the formal requirements are met, regardless of both the geographic location of the assets and the nationality or domicile of the testator. No foreign element is required, however. The international will therefore may also apply to purely domestic situations.

The testator shall declare in the presence of two witnesses and of an authorized person (notaries, diplomatic agents or French consuls) that the document is his last will and that he knows the contents thereof. The will must be handwritten or typewritten either by the testator himself or by a third person. It has to feature the testator's signature; otherwise it is null and void. If the testator has previously signed the document, he shall acknowledge his signature in the presence of the two witnesses and of the authorized person. The witnesses and the authorized person must attest the will by signing the document in the presence of the testator. The authorized person must attach to the will a certificate that all formal requirements have been complied with. In practice, the use of the international will is not very common in France due to its complex structure.

Unlike European regulation n°650/2012 of 4 July 2012[1] that entered into force in France on 17 august 2015 which require an international situation. Its main interest is to unify the applicable law to the formal validity of dispositions of property upon death made in writing. Furthermore this international will shall be valid as regards form if its form complies with : the law of the State in which the disposition was made or the agreement as to succession concluded, or the law of a State whose nationality the testator or at least one of the persons whose succession is concerned by an agreement as to succession possessed, or the law of a State in which the testator or at least one of the persons whose succession is concerned by an agreement as to succession had his domicile, or the law of the State in which the testator or at least one of the persons whose succession is concerned by an agreement as

[1] Denmark, the United Kingdom and Ireland are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.

to succession had his habitual residence, or the law of the State in which that property is located. It is clear that this regulation is in favour of the validity of wills.

A joint will ("*testament conjonctif*") set up by two or more persons in one document is prohibited in France. Yet there are debates to determine whether this rule constitutes a substantive rule or only a formal requirement. French jurisdictions seem to consider it as a formal requirement. Consequently, with regard to the Hague Convention of 5 October 1961 dealing with the conflict of laws in the form of wills, a foreign joint will may be held valid in France if the formal requirements of one of the applicable laws are satisfied.[2]

2. Enforceability of Foreign wills

The impact of international conventions entered into force in France is rather limited. As mentioned above, the Washington Convention of 26 October 1973 providing a uniform law on the form of an international will entered into force in France on 1 December 1994.

The Hague Convention of 5 October 1961 on the conflict of laws in respect of form of wills entered into force in France on 19 November 1967. The large choice of alternative execution criteria ensures the validity of the will. Therefore, a will is formally valid if the formal requirements comply with the internal law of:

- the place where the testator set up the will;

- a nationality the testator possessed either at the time when he made the disposition or at the time of his death;

- the place where the testator had his domicile either at the time when he made the disposition or at the time of his death;

- the place where the testator had his habitual residence either at the time when he made the disposition or at the time of his death or as far as immovables are concerned the place where they are situated.

The Basel Convention relating to the Establishment of a Scheme of Registration of Wills aiming at simplifying the discovery of foreign wills entered into force in France on 17 May 1976. The French central will register is called "*fichier central des dispositions testamentaires*" and only contains information as to a will's existence, the name of the testator and the name of the Notary who is keeping it in his Office. The registration must remain secret until the testator's death. Even if the existence of a will is registered, this will can be revoked at any time by another will that is not registered.

It is important to notice that the European regulation n°650/2012 has the same scope as the Hague Convention of 5 October 1961 but the last Regulation shall not affect the application of international conventions to which one or more Member States are party at the time of adoption of this Regulation and which concern matters covered by this Regulation. That's mean Member States which are Contracting Parties to the Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions shall continue to apply the provisions of that Convention instead of the European regulation.

France did however neither ratify the Hague Convention of 1st July 1985 on the Law applicable to Trusts and on their Recognition (signed on 26 November 1991) nor sign the following conventions:

- Hague Convention of 1st February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters;

[2] See below.

- Hague Convention of 15 June 1955 Relating to the Settlement of the Conflict between the Law of Nationality and the Law of Domicile;

- Hague Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons;

- Hague Convention of 1st August 1989 on the Law applicable to Succession to the Estates of Deceased Persons.

B. Will Substitutes (Revocable Trusts or Entities)

Trusts structures are basically unknown under French law and their tax treatment is disadvantageous (see below). A testator may dispose of his assets via a gift upon death where the beneficiary receives the granted assets at the death of the donor. However, the disposition does not convey any benefit to the beneficiary during the lifetime of the donor.

The following two types of dispositions mortis causa must be distinguished:

- Gift of future property. A gift of future property is commonly used between spouses. It is provided for either in a prenuptial agreement (very rare situation) or in a Deed drafted by a Notary ("*donations au dernier vivant*"). When the gift is contained in a Deed, it can be revoked at any time by the spouse. It has the same effect as a will. If there are descendants, a Deed may enable the surviving spouse to choose between various options such as a usufruct in the estate and/or a portion in full ownership the extent of which will depend on the number of children.

- Reversion of usufruct ("*réversion d'usufruit*"). When making a gift of property to someone such as a child, the donor may decide to keep the beneficial interest ("*usufruit*") of this property during his lifetime and can specify that at the time of his death, the beneficial interest will be vested in a third person, such as his spouse, for her lifetime if this person survives the donor.

C. Powers of Attorney, Directives, and Similar Disability Documents

One may give a power of attorney to any person to administer his assets. Such power is revocable at any time.

In respect of disability, only the diagnosed impairment of physical or mental skills may justify protective measures if the individual concerned is not able to attend to his affairs on his own. However, the judge ("*Juge des Tutelles*") is only entitled to order such measures if he has a medical certificate proving the mental or physical problem of the adult.

In French law there are four different protection steps:

- Any individual who needs temporary protection or who needs representation in order to accomplish certain acts may be placed under judicial protection ("*sauvegarde de justice*"). In general, the individual concerned remains entitled to exercise his rights except such acts for which a special representative has been appointed.

- Persons in need of continuous control and assistance regarding major acts of civil life may be placed under curatorship ("*curatelle*"). Curatorship is only pronounced if it is certain that judicial protection cannot sufficiently ensure the protection of the person concerned.

- Any individual who needs to be continuously represented in acts of civil life may be placed under guardianship ("*tutelle*"), but only if neither judicial protection nor curatorship can ensure sufficient protection.

- Since 2016 the French legislation created a new protection step : the family empowerment ("habilitation familiale"). This new protection step will be in forced when members of the family can take care of the person and when there is no dispute in the family. The protector who has larger powers than in "tutelle" can be his ascendents or descendants, brothers and sisters, spouse or partner.

By means of a mandate of future protection ("*mandat de protection future*"), any adult may by private or by notarial deed designate one or several persons to represent him in the event that he is unable to attend to his affairs in the future due to an impairment of physical or mental skills. The difficulties relating to the implementation of such a mandate resulted from its absence of publicity; the registration of that type of notarial deed has now been provided for. The other difficulty results from its combination with the above-mentioned legal protection provisions. In fact, the judge may put an end to the mandate when ordering a curatorship or guardianship or suspend it during a placement under judicial protection.

However, pursuant to article 448 of the French Civil Code, any individual may appoint the person he wants to be his curator or guardian in case of future placement under one of these protection schemes. In general, the judge must respect this choice. Such an appointment may also be made by the parents of minor children to provide for the contingency that the parents may die or that they will no longer be able to take care of their children.

Finally, any adult may draft a will to provide for the contingency that he will be unable to express his wishes relating to the end of his life ("*testament de fin de vie*"), especially concerning the conditions of limitation and abandon of medical treatment. It must be established at least three years before the person's state of unconsciousness. If such a will is valid, the attending doctor must take into account this will for any decision about the intervention, examination or treatment of the person concerned.

II. Estate Administration

A. Overview of Administration Procedures

French succession procedure is quite different from U.S. probate procedure. In France, the deceased's estate is not vested in an executor or administrator prior to being distributed to the heirs or other successors. The estate vests immediately in the beneficiaries. As explained below, if an executor has been appointed by the deceased, his role is to ensure that the estate is dealt with according to the deceased's wishes, but his powers of sale are restricted, especially if there are reserved heirs such as children.

The testator may appoint one or more representatives whose duty is to administer the totality or part of the estate for the benefit of one or several heirs for a period of two or five years – depending on the circumstances – it can be renewed by the judge ("*mandat à effet posthume*"). Such an appointment deprives the heirs of all administration powers and must therefore be justified by a serious and legitimate interest, e.g. the presence of a minor or the existence of property that requires particular administration abilities. The appointment must be contained in a Deed and accepted before the testator's death. However, the administration ends if the heirs proceed to the sale of the assets without any possibility for the representative to refuse the sale. The mandate is free of charge unless fees have been stipulated in the contract. Even in this situation, remuneration is subject to the limits of French law provisions and may be reduced by judge.

When receiving the vested interests, the heirs may agree to convey the settlement of the succession either to one of them or to a third person ("*mandat conventionnel*") under the condition that all heirs have accepted the succession purely and simply *("acceptation pure et simple*"). There are no formal requirements. The appointment is subject to the general provisions of law in respect of mandate (e.g. the appointed representative must give account of the administration and execute his mandate with loyalty and diligence). The mandate is necessarily judicial if one of the heirs has accepted the succession only to the extent of the net assets, i.e. the heir cannot be liable for debt exceeding the assets. Any person concerned (even creditors) may claim the appointment of a judicial representative in charge of the temporary administration of the succession.

The testator may appoint one or more executors whose mission is solely to ensure the execution of the testator's last will ("*exécuteur testamentaire*"). The executor is free to accept or refuse the mandate, but if he accepts he will be bound to his consent during the whole procedure. If the testator also appointed a legal representative *("mandataire à effet posthume*"), the latter may only execute his powers subject to the condition that the role of the executor is not affected (art. 812 French Civil Code). Due to their limited powers in presence of protected heirs, the appointment of executors is very rare in France.

The executor is entitled to defend the validity of the will in case of any challenge as well as to secure the will's execution (art. 1028 French Civil Code). Thereby, he may undertake any preservation measures he considers useful with regard to the settlement of the succession and the accomplishment of the testator's last will. Furthermore, in default of sufficient cash to pay urgent debts, the executor is entitled to arrange the sale of movable assets (art. 1029, al. 3 French Civil Code). In order to deliver the legacies within the limits of the balance of the estate, the testator may also authorize the executor to sell movable assets if necessary (art. 1030 French Civil Code).

If no protected heir accepts the succession, the testator may authorize the executor to dispose of the succession's immovable property as well as to receive and invest capital, to settle debts and to share the estate between heirs and legatees (art. 1030-1 French Civil Code). Except in case of a judicial extension, the executor of the will must accomplish his mission within two years after the death. During the six months following the end of his mission, the executor will have to report all his actions to the heirs.

The execution of the will is free of fees. However, it is common practice for the testator to reward the executor with a legacy in consideration of services rendered which must neither be disproportionate to the testator's faculties nor to the nature of the services rendered by the executor (art. 1033-1 French Civil Code). All charges paid by the executor during his mandate must be refunded by the estate (art. 1034 French Civil Code).

1. Proof of Inheritance

In order to be vested, the heir must justify his inheritance. The proof of succession is free and may be established by any means (art. 730 French Civil Code). In practice, it is established by notarial Deed ("*acte de notoriété*") referring to the death certificate, the will if any, and the relevant supporting documents (as well as the record of civil status – the family record book). By means of this Deed, a person can easily prove his rights in the estate. The affirmation prevails unless evidence is presented to the contrary (art. 730-3 French Civil Code).

Since 17 August 2015 the European Certificate of Succession is used by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate. This certificate is valid in every Member State of the European Union except Denmark, United Kingdom and Ireland. Now it is more easy to establish the proof of inheritance in Europe.

2. Transfer of Rights

As mentioned above, the estate vests immediately in the beneficiaries (art 724 French Civil Code). The heirs have three options:

- "*Acceptation pure et simple*." One may choose the pure and simple acceptance of the succession. In this case, the deceased's estate merges with the heir's own estate. In case of insufficiency of the succession's assets to pay the debts, the heir is required to settle all liabilities to the full extent of his personal property. However, he may request to be discharged of his liability to pay a debt of the deceased if he could not be aware of the existence of this debt when accepting the inheritance. Such a claim must be justified by legitimate reasons and is only possible under the condition that the debt would seriously encumber the heir's personal property.

- "*Acceptation à concurrence de l'actif net*." If the acceptance of the inheritance is made only to the amount of the net assets, the heir is liable for payment of the deceased's debts only to the extent of the assets received. In order to determine the asset's net value, an inventory must be established. Strict formalities must be complied with in strict limit of time.

- "*Renonciation à la succession*." The heir may waive his rights in the inheritance (art. 768 French Civil Code) by a declaration submitted to court. In this case, his portion of the estate may pass to his representatives (if representation is possible – descendants and privileged collaterals i.e. brother/sister/nephews/nieces), or to his co-heirs or to heirs of subsequent order.

In default of any other heirs, the succession may be declared "vacant" and therefore be allocated to the state.

The legal heir must renounce the totality of his portion. However, in case of a legacy by will, the legatee can choose to receive only a portion of his legacy. This is not considered to be a gift to the other heirs.

When the legal heirs are vested, they are in "*indivision*" which is a form of ownership that resembles tenancy in common. An undivided share cannot be separated from the interests of other owners until the tenancy in common is brought to an end. All tenants in common share the same beneficial rights to occupy all parts of the immovable property and to receive a share of any income the estate produces. It is a rule of French law that no one can be obligated to remain a joint owner. Therefore, if the heirs cannot reach an agreement, one can petition the court to obtain the division of the estate. If an asset cannot be shared, it will be sold by auction.

The administration of the undivided estate has to be decided by the heirs being entitled to at least two-thirds of the undivided rights (art. 815-3 French Civil Code). In this case the co-heirs may:

- administer the undivided property for common exploitation;

- sell the furniture in order to pay any debts and charges;

- contract or renew rental agreements which do not concern buildings of agricultural, commercial, industrial or artisanal use.

However acts of disposal such as sales require the unanimous consent of all co-heirs. If one heir refuses to agree for such act and if his refusal endangers the common interests of the co-heirs, it is possible to petition the court for authorization to proceed to the sale. There are no specific formal requirements for partition of the estate. Nevertheless, if immovable assets are concerned, the apportionment must be included in a notarial Deed for land registration reasons. Furthermore, if the co-heirs include a minor with one parent or an incapacitated person, the Deed must be approved by the judge.

B. Intestate Succession and Forced Heirship

1. Intestate Succession

Articles 731 et seq. of the French Civil Code establish four different categories of legal heirs in the absence of spouse in the following order:

1 – children and their descendants;

2 – privileged ascendants (parents) and privileged collateral relatives (brothers and sisters and their respective descendants);

3 – ordinary ascendants other than parents;

4 – ordinary collateral relatives.

In the same order, provisions referring to the degree of kinship provide that only the closest relative is entitled to inherit. Therefore, a grandchild is excluded from the succession of his grandfather (two degrees) if the latter has left a child (one degree). If a child or a sibling predeceased, his descendants may represent him and take over his rights in the succession. However, representation is only possible in a direct descendent or privileged collateral line (art. 751 to 755 of the French Civil Code).

If the heirs are ascendants of the deceased, the estate is divided into two parts (one maternal and one paternal branch) pursuant to the principle of division. Inside each branch, only the closest ascendant is entitled to inherit (art. 746 to 750 of the French Civil Code).

If there is no will and the deceased is survived by a spouse, the rules are different.

If the deceased is survived by any children or descendants, the surviving spouse (i) receives either a usufruct ("*usufruit*") on the entire the estate or ¼ in full ownership of the estate if all children are the offspring of both spouses and (ii) receives solely ¼ in full ownership of the estate if one or more children are not of both spouses (art. 757 French Civil Code);

If there are no children or descendants but mother and father of the deceased, the surviving spouse receives 1/2 of the property. The other half is given to the parents of the deceased (one-quarter to the father, one-quarter to the mother). If there is only either the father or the mother, the surviving spouse is entitled to three-quarters of the estate (art. 757-1 French Civil Code).

In absence of any descendants and parents of the deceased, the surviving spouse receives 100% of the estate (art. 757-2 French Civil Code). However, 50% of all property given to the deceased by his ascendants by means of gift or inheritance and that forms part of the estate is allocated to the deceased's brothers and sisters under the condition that they are themselves descendants of the predeceased parent who was the origin of the transfer (art. 757-3 French Civil Code).

The surviving spouse benefits from an automatic right to occupy the real property that was the domicile of the couple during one year from the death. If the property was rented, rent is paid by the estate for this period. In any situation, within one year from the death, the spouse can claim the right to occupy during his lifetime the property that was the domicile of the couple and that was owned by the deceased.

French law does not provide any legal succession rights for the partners of a civil solidary pact (PACS). The surviving partner has succession rights only if there is a corresponding will.

2. Forced Heirship Rules

Under these rules, if the deceased has children or descendants, or if he has no children, but a spouse alive at his death, they have an automatic right to a share (the "réserve") of the deceased's estate.

They are "*héritiers réservataires*". The part of a person's assets that is not reserved for protected heirs can be left as the testator wishes. This is referred to as the disposable part *("quotité disponible*").

In order to establish which part of the estate is reserved for the heirs, both the assets owned by the deceased at the time of his death plus any gifts he made during his lifetime are taken into account, irrespective of the beneficiary or of the form (direct, indirect, hidden or notarized). This is referred to as the "*masse*". Inter vivos gifts are taken into account at their value on the date of death, and not when the donee received them, except in the very specific case of a gift called ("*donation-partage*") (gifts made to all children in one Deed).

If the deceased is survived by descendants, the reserved portion of this "masse" depends on the number of children: if there is one child, the reserved portion is one-half of the estate. It is increased to two-thirds if there are two children and to three-quarters if there are three or more children. If there are no children, one-quarter of the "*masse*" is reserved to the surviving spouse.

The testator/donor may freely transfer the disposable part ("*quotité disponible*") resulting from the difference between the net assets of the estate and the reserved portion.

Two types of donations should be distinguished:

- "*donations en avancement de part successorale*" or formerly named "*en avancement d'hoirie*": this type of donation is made to an heir and the value of the given property is included in his reserved share. As he has already received part of the inheritance, he will receive correspondingly less of the assets at the time of the partition of the estate. For this purpose, the given assets will be valued at the time of the partition.

- "*donations hors part successorale*" or formerly named *"par préciput et hors part*": the aim of this type of gift is to favour an heir as it is offset against the disposable part. This type of gift can also be made to third parties and to the spouse.

When third parties, the spouse, or an heir have received over and above the disposable part, they must make restitution of this property in value or in kind if the person wishes to do so. Legacies are first reduced and then if the legacy is not sufficient, the most recent inter vivos gift is reduced and so on by chronological order.

Without their approval, protected heirs cannot be deprived of their reserved portion. However, with the agreement of the donor or testator, a protected heir may in advance waive his right in respect of the totality or a portion of his reserved share to the benefit of one or more specific persons. The waiver must be attested in front of two notaries (art. 929 to 930-5 of the French Civil Code).

According to these heirship rules, the reserved share must be vested in full ownership and free of charges. However, there is an exception when there are children and a surviving spouse, as the latter can benefit from an usufruct ("usufruit") on the entire estate in respect of his legal rights as mentioned above. Moreover, by will, the testator can leave the choice between three options at the time of his death so that the spouse can choose to receive either an usufruct in the entire estate, or ¼ in full ownership and the remainder ¾ in usufruct, or the disposable part which extent will depend on the number of children.

The rights of the surviving spouse in full ownership can only extend to such assets still owned by the deceased and are offset against the disposable part. Accordingly, if the testator has made too many intervivos gifts, these rights may not apply.

C. Marital Property

The rights of the surviving spouse resulting from his marital status are independent of any succession rights. In order to define which assets are part of the deceased's estate, it is first necessary to liquidate the matrimonial situation.

In the absence of a marriage contract, the French civil code establishes how the assets acquired during the marriage are to be dealt with. This process is known as the legal community of assets ("*communauté réduite aux acquêts*"). The assets acquired before the marriage or received through a gift or an inheritance remain the property of the spouse concerned. The assets purchased during the marriage with the earnings of the couple are common regardless of how they are acquired (in one spouse's name or in both names). If funds derived from the sale of property acquired for example by gift are used to purchase common property, a debt ("*récompense*") will be due by the common estate to the personal estate of the relevant spouse when liquidating the matrimonial regime at the time of the death. Similarly, a debt can be due by the personal estate to the common estate if common funds are invested in a personal property.

Therefore, under this regime, at the time of the death, the surviving spouse receives one-half of the common assets and the deceased's estate includes one half of the common assets and his personal property. Then, the surviving spouse can claim his or her succession rights on the deceased's estate.

Marriage contracts fall into two broad categories. The first is "the universal community of assets" and the second is "the separation of assets". This latter contract is quite simple, as there are no common assets. A spouse always remains the owner of what is acquired in his own name. Debts can be due between spouses, if funds from one spouse's personal estate have been used to purchase an asset, depending on the other spouse's personal estate.

According to the universal community of assets regime, there is no personal property. Instead, all assets are common and must be divided equally between the spouses at the time of the death. This regime is often combined with a survivorship clause so that on the first death, all assets will vest immediately in the survivor. The property will not be included in the deceased's estate and thus the forced heirship rules will not apply if the children are the offspring of both spouses.

D. Tenancies, Survivorship Accounts, and Payable on Death Accounts

1. Tenancies

Article 1751 of the French civil code provides that the right to a lease of premises, without professional or commercial character, which is actually used for the dwelling of two partners or spouses, whatever their matrimonial regime, notwithstanding any agreement to the contrary and even if the lease was conclude before the marriage, considered to belong to both spouses or partners when both partners request it jointly. Therefore, in case of death of one of the spouses/partners, the surviving spouse/partner co-lessee has an exclusive right on it, except where he or she expressly renounces it.

2. Survivorship Accounts and Payable on Death Accounts

The survivorship account does not exist under French law. If the deceased had a personal account, as soon as the bank is informed of the death, this account can no longer function except to pay certain minor debts like funeral expenses. The heirs must agree and give specific instructions to the bank as to the transfer of the funds. If there is a foreign element, the bank will require a certificate of the French tax authorities specifying that no tax is due in France or that the tax has been paid.

If the deceased had a joint account ("*compte joint*") with his spouse or a third party, the account continues to function under the sole signature of the survivor unless the heirs instruct the bank otherwise. Then, the joint account will become a tenancy in common account ("*compte indivis*") which requires the signature of all parties to function.

III. Trusts, Foundations, and Other Planning Structures

A. Common Techniques

1. Lifetime Gifts

Granting a gift to a spouse, a child or any other person is a common estate planning technique. Forced heirship rules must be considered in this context, as mentioned above.

2. Dissociation of Usufruct and Bare Ownership

Property rights may be split by the dissociation of the usufruct (usufruit) and the bare ownership (nue-propriété). The usufruct holder is entitled to use the asset, rent it out and receive the rental income. The bare ownership holder may decide to sell the asset and he needs the approval of the usufruct for such sale. A person may make a gift of the bare ownership only and retain the usufruct right. Upon the death of the usufruct holder, the usufruct extinguishes without triggering any taxation. French law also provides the possibility of setting up a temporary usufruct (extinguishing automatically after a certain period of time). It is also possible to grant the usufruct and the bare ownership rights to different beneficiaries.

3. Real Estate

Our private international law rule relating to inheritance has recently changed due to an European regulation n°650/2012 that entered into force in France on 17 August 2015. Now transfer on death of French real estate or French movable estate is governed by the law of the State where the deceased had his last current domicile ("*résidence habituelle*") or by the law of the State of his nationality if the deceased has chosen the application of this latter rule by Will.

The mechanism of "renvoi" can be applied when the deceased has not chosen the law of his nationality and when the application of the conflict of law rule of any third State revert to the law of a Member State or to the law of a third State which accepts its jurisdiction.

Transferring real estate into a company having a legal personality permits the transferor to change the nature of the property rights held. The transmitting person may give the shares to his children over time while reserving a lifelong usufruct for himself. French gift duties may be avoided via the progressive disposition of the shares to the children by using the tax allowance to the full extent every fifteen years (see below concerning tax aspects).

4. Life Insurance

Premiums paid by a life insurance subscriber into a life insurance contract become the property of the insurance company and cannot be included in the subscriber's estate. The subscriber may therefore freely choose the identity of the beneficiary, without being restricted by the French forced heirship rules. This freedom suffers one restriction: the exaggerated premium principle, according to which life insurance premiums can be reintegrated into the subscriber's estate if they appear exaggerated in comparison with his overall wealth.

Funds paid by the insurance company to the beneficiaries remain in general out of the scope of inheritance taxes and are subject to a specific tax depending on their amount : 20% or 31.25% beyond 700,000 Euros,. Insurance funds corresponding to premiums of more than 30,500 Euros and paid after the 70th birthday of the insured person are reintegrated into his taxable estate.

B. Fiduciary Duties (Trustees, Board Members, Directors, etc.)

1. Trusts

The legal concept of the Anglo-Saxon trust is unknown by French law. Therefore it is not possible to create a trust in France[3].

2. Fiduciary agreement

The concept of *fiducie* was introduced in France by the law of 19 February 2007. This concept is inspired by the trust but only has a limited patrimonial use, since the law provides that fiducies cannot be used for gift or inheritance purposes. The *fiducie* is a contract by which a settlor ("*constituant*") transfers assets, rights or securities (present or future) to a fiduciary ("f*iduciaire*") who holds the assets separate from his own property and manages them for the benefit of one or more beneficiaries. The *fiducie* can be used for either security or management purposes (art. 2011 et seqq., 2372-1 et seqq., 2488-1 et seqq. French Civil Code).

3. Foundations

At the moment, there are two main techniques to create a foundation in French law, both are charity-oriented. The first option is for the founder to transfer assets to an individual or to legal person, with a duty for this person or corporation to use the assets for a charity. The foundation is deprived from corporate personality). Second option: the founder creates a new legal entity with a charitable purpose. This foundation can acquire a legal personality by a ministerial decree, validated by the French Council of State ("*Conseil d'Etat*"), if the charitable purpose is of general interest. Acquiring a legal personality authorizes the foundation to receive gifts and grants the benefit of a preferred tax regime: exemption from taxes relating to its economic activities (corporate tax, VAT, regional economic contribution).

C. Treatment of foreign trusts and foundations

1. Foreign Trusts

France has not ratified the Hague Convention of 1 July 1985 on the Law Applicable on Trusts and their Recognition. Although the legal concept of the trust is completely unknown by French law, French jurisdiction accepted to consider the characteristics of the trust when determining the legal and tax treatment of either the settlor or the beneficiaries in France. French case law on the subject remained very rare.

Legal provisions are set forth in the Amending Finance Law for 2011 ("the Law"), which was enacted on 30 July 2011. Unless provided by the Law itself, the modifications are effective as of 31 July 2011.

These rules do not aim at ensuring that all common-law rules applicable to trusts are taken into account in France, but to make sure that the French tax administration easily identifies taxable assets and corresponding taxpayers.

The French tax administration takes the view that a trust is always an instrument favoring tax avoidance, ignoring the fact that there may be other purposes behind the trust, such as retaining control of a family's assets.

Territoriality rules

Wealth tax and inheritance tax rules are modified to encompass trust structures. French inheritance and wealth tax becomes applicable in the following cases:

- Settlor resident in France : on all trust assets

[3] For the treatment of foreign trusts in France please see below (III. c.).

- Beneficiary resident in France: on all assets allocated (or deemed to be allocated) to this beneficiary;
- Settlor and beneficiaries resident out of France: on trust assets located in France

These rules are applicable subject to the rules contained in the tax treaties signed by France, when applicable.

Wealth tax

The settlor is the one liable to wealth tax. Actual tax liability takes place when the settlor is resident in France or when the trust holds French assets.

Upon the death of the settlor, the beneficiaries are regarded as the new "settlors", thus becoming liable to wealth tax.

This provision is intended to put an end to French case law (TGI Nanterre, 4 May 2004, No. 03-9350), pursuant to which neither the beneficiaries nor the settlor of a discretionary and irrevocable trust could be regarded as owners of the assets of the trust under French tax law. The intention of the Law is to bypass the interpretation of the judge, which was based on an accurate legal analysis, by introducing an autonomous tax approach.

Under the Law, when the trust assets have been disclosed to the tax authorities for wealth tax purposes, wealth tax will apply on the net market value of the trust assets at progressive rates from 0.5 up to 1.5%.

Specific 1.5% tax

This tax applies each time the trust assets have not been declared for wealth tax purposes by the person liable to wealth tax under the above rules.

When due, it is applied on all trust assets when the settlor or the beneficiaries are resident in France and is limited to the trust assets located in France when the settlor and beneficiaries are resident out of France.

The tax is assessed on the basis of the net market value of the trust assets on 31 December of each year. As this tax is specific, tax exemptions usually applicable to wealth tax would not apply and tax treaty provisions relative to wealth tax would also have no impact.

The trustee has to file a yearly return mentioning the trust assets and pay the corresponding tax. The settlor and beneficiaries are under a joint and several liability to pay the tax.

Filing duties of the trustee

In addition to the above, the trustee has to file a yearly return mentioning all trust characteristics and namely: identity of the settlor and of the beneficiaries, all assets trust assets that may enter into the scope of the 0.5% tax.

Failing to comply with this filing duty triggers a penalty equal to 10.000 € or 5% of the trust assets, if this amount is higher. The settlor and beneficiaries entering into the scope of the 0,5% tax bear a joint and several liability to pay the tax.

Inheritance tax aspects

Assessment takes place upon the death of the settlor. The existence of an actual distribution to the beneficiaries is irrelevant (taxation may take place even if the trust does not proceed to any distribution). The tax treatment is:

- An inheritance transmission to a specific person can be identified (this would be the case when the trust is terminated upon the death of the settlor): standard inheritance tax rates apply, depending on the existing family link. Transmissions from parents to their descendants in direct line are subject to a progressive rate starting at 0% and ending at 45%.

- The trust deed provides for a global distribution to the descendants in direct line: the higher rate of 45% applies directly, to all assets taxable in France.
- In other cases (i.e. when the trust is not terminated upon the settlor's death and when the beneficiaries are not specifically identified or that are not exclusively descendants in direct line): a specific tax at 60% applies on all trust assets taxable in France.

The 60% rate applies automatically when the trustee is established in a non-cooperative tax jurisdiction.

In the last three cases mentioned above, the trustee is liable to pay the tax as determined above. The beneficiaries have a joint and several liability to pay the tax.

2. Foreign foundations

In contrast to foundations that have their registered seat in France, foreign foundations may not benefit from any tax shelter (unless they are established within the EU, where they could claim the right to a treatment equal to the one applicable to French foundations). Donations made to foreign foundations are not entitled to benefit from any tax exemption in France.

IV. Taxation

A. Domicile and residency

French tax law does not make any difference between residency and domicile. The difference is merely a terminological one: tax domicile is determined under domestic law and tax treaties refer to tax residence.

Under article 4B of the French tax code, a person is deemed to be domiciled in France for tax purposes where one of the following alternative criteria is met:

- Their family home or, in case such home cannot be determined, their main place of abode, is in France ;
- They perform their main professional activity in France ;
- The center of their economic interest is located in France.

In case the domestic criteria of French law and of another jurisdiction lead to a conflict of residence, tax residence will be determined in accordance with the tax residence criteria set in the tax treaty between France and that other State.

Many of the treaties signed by France are based on the OECD Model Tax Convention which sets four tax residence criteria which are to be regarded successively:

- a permanent home ;
- personal and economic relations ;
- an habitual place of abode ;
- nationality.

The treaty definition of residence will prevail over the French domestic rules in order to determine one's domicile for inheritance/gift tax purposes or for income/capital tax purposes, bearing in mind that inheritance and gift taxes are covered by only a few tax treaties (approximately 30). As a comparison, income and wealth taxes are covered by more than a hundred tax treaties.

B. Gift, estate and inheritance taxes

Inheritance/Gift duties apply according to a progressive schedule the brackets of which correspond to the beneficiary's share in the estate:

Transfer to offspring:

Taxable share	Applicable rate
Up to €8 072	5%
From €8 072 up to €12 109	10%
From €12 109 up to €15 932	15%
From €15 932 up to €552 324	20%
From €552 324 up to €902 838	30%
From €902 838 up to €1 805 677	40%
Over €1 805 677	45%

Transfer to siblings:

Taxable share	Applicable rate
up to €24 430	35%
over €24 430	45%
Relatives up to the fourth degree of kinship:	55%
More distant relatives or unrelated parties:	60%

If the deceased/donor is considered as domiciled in France for tax purposes upon his death/at the time the gift is made, French duties are to be applied to the whole estate, regardless of the actual location of the transferred assets. If the deceased lived outside France upon his death or if the donor lives outside France at the time the gift is made, the following territoriality rules are to be applied:

- French taxes will apply to all assets received by beneficiaries that are resident in France for tax purposes at the time of the transfer (death of gift) and have been so for 6 years over the past ten years.
- In case the beneficiary does not meet the above domicile test, French taxes will only be due on the transfer of French assets (assets materially located in France, shares in French companies, but also shares in foreign companies that predominantly hold, directly or indirectly, French real estate).
- Taxes paid in another country may be credited against French taxes due.

For inheritance tax purposes, the taxable basis is determined by including all assets received by the beneficiary, plus all gifts received from the deceased/donor over the past 15 years (in this case, gift tax paid on the recaptured gift is to be credited against final inheritance tax paid).

Among others, the following transfers upon death are fully or partially exempted:

- transfers upon death between spouses or civil partners are fully exempted.;
- transfers of shares in commercial, agricultural or industrial companies provided the transferred participation qualifies as substantial and the beneficiaries jointly commit to keep the transferred shares for a certain period of time, are partially exempted: only 25% of the transferred shares value is taxed;
- Transfers of real estate properties listed as historical monuments are fully exempted.

C. Taxes on income and capital

1. Taxes on income

If one is domiciled in France for tax purposes, they are to be taxed in France on their worldwide income. If not, French taxation will only apply to French-sourced income. These principles will apply unless a relevant tax treaty otherwise provides.

Foreign employees sent to France are only subject to tax amounting to 50% of their non-French passive income. This tax advantage is time-limited and ends on December 31 of the fifth year following the beginning of the employment in France. Passive income also includes capital income, author's royalties, license fees and capital gains resulting from the sale of securities.

Under French tax law, individuals are required to report the total amount of their disposable income earned in the previous year.

Wages, salaries, pensions and annuities, investment income (dividend and interest), capital gains, income from property (rental income), business profits, non-commercial profits and agricultural profits fall within the scope of income tax and will be taxed according to the following progressive schedule:

Taxable income	Applicable rate
Up to €9 700	0%
From €9 700 up to €26 791	14%
From €26 791 up to €71 826	30%
From €71 826 up to €152 108	41%
Over €152 108	45%

Husband and wife are jointly liable on their aggregated income and that of their dependent children. In order to take the family status into consideration, the aggregated income is divided into a number of "parts" corresponding to the number of people making up the household (each spouse = 1 part, first and second dependent child = 0,5 part, third child and next = 1 part) and taxation according to the progressive schedule applies to the resulting amount and is then multiplied by the number of "parts" (so- called "quotient familial" – family coefficient). However, the reducing effect is limited to € 1 512 per dependent children.

As regards to non-resident taxpayers, liable to income tax on their French-sourced income only, a minimum 20% income tax rate will apply (14,4% in the French Overseas Departments), unless they can substantiate that their individual average tax rate, were they taxed on their worldwide income, would be lower than 20%.

Capital gains on the sale of real estate, be it by a resident or a non-resident, are subject to a 19% flat tax-rate (plus social contributions at a 15,5% rate – see below). The sale of the main home will be exempted from capital gain taxation as well as the sale of a real estate asset which has been owned for 30 years or more.

2. Taxes on investment income

As mentioned above, such income is to be taxed according to the progressive schedule.

Dividends received from a company established in France, in the EU or in a country having signed a qualifying tax treaty with France may benefit from a 40% rebate. Such dividends are subject to a mandatory non-final 21% withholding tax. This withholding tax will be set off against total income tax. French-sourced dividends paid to non-resident shareholders are subject to a 30% withholding tax unless the relevant tax treaty otherwise provides. Most treaties signed by France provide for a 15% rate or less. .

Dividend, interest and certain other income paid to a resident in a non-cooperative tax jurisdiction are subject to a 75% withholding tax.

Investment income received by foreign employees hired in France to perform their functions there (so-called "impatriates") will be 50% exempted from tax until the end of the eighth year following the year they started their assignment in France.

3. Social contributions

In addition to income tax, French tax residents have to pay social contributions (these are additional taxes, different from the social security premiums one could pay).

Tax rates vary depending on the type of income. Income from capital (investment income, capital gains and rental income) will be subject to a 15,5% total social contributions rate. Payment of social contributions on capital income will occur at the time as payment of general income tax.

Social taxes are assessed on income derived by persons that are tax residents in France. However, rental income and capital gains derived from French real estate are still subject to French social taxes even if the beneficiary is not a resident in France. This rule, enacted back in 2012, has been successfully challenged at the level of both French an EU courts. As a result of these rulings, French law was redrafted in order to keep these social taxes applicable to non-residents as of 2016. Yet, the new wording still appears questionable.

4. Wealth tax

Wealth tax ("*impôt de solidarité sur la fortune*" (ISF)) applies to individuals where the total net value of their assets (value of their assets minus liabilities) exceeds €1 300 000. Professional assets, copyrights or other intellectual property rights as well as works of art are exempted from wealth taxation. If the total net value of their assets exceeds €1 300 000, taxation applies as of €800 000 according to the following progressive schedule.

Net value of assets	Applicable rate
Up to €800 000 €	0%
From €800 000 up to €1 300 000 €	0,5%
From €1 300 000 up to €2 570 000	0,7%
From €2 570 000 up to €5 000 000	1%
From €5 000 000 up to €10 000 000	1,25%
Over €10 000 000	1,5%

5. Specific taxation of real estate property

Real property tax is levied on an annual basis and is to be paid by the owner of the premises (landlord). Tax rates are determined annually on the basis of the cadastral rental value ("*valeur locative*") established for each town (which is disconnected from the actual rental value). There are different taxes depending on the nature of the real property (unimproved/improved land). A 50% tax exemption is supposed to cover common costs (administration and maintenance costs, depreciation, insurance, reparations). Regarding unimproved land, the tax allowance is limited to 20%.

Dwelling tax is also levied on an annual basis and is to be paid by the individual living on the premises on 1 January (owner or tenant if the premises are under lease) .Dwelling tax is also based on the cadastral rental value of the premises. . The taxpayer's income as well as the number of his dependents are taken into consideration..

Entities (companies, corporations, entities without legal personality, such as trusts) which, directly or indirectly, own one or several real estate assets located in France, are in principle subject to an annual **3% real estate tax** unless they fall outside the scope of the tax or benefit from an exemption. This tax is assessed on the actual fair market value of the real estate asset.