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# France

## International Estate Planning Guide

### Private Client Committee

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## I. Estate devolution

### A. Intestate succession (in the absence of will)

In the absence of a marital relationship at the time of the deceased's passing, French succession rules establish a hierarchical order for potential heirs. Each level of priority is granted a right to the inheritance, with subsequent ranks superseding those preceding them in their absence. The order is as follows:

- children and descendants;
- parents, siblings and their descendants;
- other ascendants; and
- uncles, aunts and cousins until the sixth degree.

The heir can renounce the inheritance. The heir's descendants can then act in lieu of the renouncing heir through the representation mechanism.

Heirs cannot be expelled from the inheritance, except in very rare and limited cases.

Succession rules rely on a system of reserved portions (*réserve*) and a freely disposable portion (*quotité disponible*). Heirs who are descendants (first level of priority) have the following right to a reserved portion, that is, a minimum portion in the estate set by law, the rest corresponding to the freely disposable portion:

Descendants		One child	Two children	Three+ children
<b>Heirs would be entitled to...</b>	The reserved portion	Half in full ownership	Two-thirds in full ownership	Three-quarters in full ownership
<b>Possibility to dispose of...</b>	The freely disposable portion	Half in full ownership	One-third in full ownership	A quarter in full ownership

If the deceased was married on death, the matrimonial regime must first be liquidated to determine the deceased's estate (see the section regarding the impact of the matrimonial status chosen). Then, the surviving spouse's share in the estate varies depending on the presence of other heirs of the deceased, in particular, if the deceased had children (in common or not);

- in the absence of descendants, the surviving spouse receives half, the rest being bequeathed to the deceased's parents (or three-quarters if one parent only remains alive)
- in the presence of common children, the surviving spouse can choose between a quarter of the estate in full ownership or the global estate in usufruct; and
- in the presence of at least one child from another parent, the surviving spouse's share corresponds to a quarter of the estate in full ownership.

The surviving spouse or a legal partner (under a *pacte civil de solidarité* or 'PACS') may also be entitled to a right to housing.

The surviving spouse's legal right can be limited or enhanced through various mechanisms, for example, through a will, a donation to the surviving spouse (*donation au dernier vivant*) or the use of life insurance, to a certain extent.

However, a cohabiting partner (*concubin*) or legal partner (under a 'PACS') does not have any right to inheritance in the absence of a will.

Finally, international successions follow Regulation (EU) No 650/2012 dated 4 July 2012. The key principle is that the law applicable to the entire succession is that of the state in which the deceased had his or her habitual residence at the time of his or her death. However, a recent change occurred in France: a compensatory levy was introduced on French situated assets for European Union children when foreign laws do not ensure sufficient protection of their reserved portion.

Caution: this rule is related to civil law only; tax law has its own territorial rules.

### *B. Wills*

In France, a will is referred to as a *testament*. The French legal system recognises different types of wills:

- Holographic will (*testament olographe*): This type of will is entirely handwritten, dated and signed by the testator (the person making the will). It does not require witnesses but must be entirely handwritten by the testator;
- Authentic will (*testament authentique*): This type of will is drawn up in the presence of a notary and two witnesses, or in the presence of two notaries. The notary drafts the will based on the testator's instructions, and the testator signs it in the presence of the notary and witnesses, or two notaries; and
- Mystic will (*testament mystique*): This type of will is written by the testator or another person and then handed over to a notary in a sealed envelope.

The notary can keep the will and open it only on the testator's death. While not mandatory, registering a will with the French Central Register of Wills (Fichier Central des Dispositions de Dernières Volontés) provides a way to officially record the existence of the will. The testator can revoke or amend his or her will at any time.

To make a will in France, a person must be at least 16 years old. The testator has freedom of disposition, meaning the testator can determine how his or her assets will be distributed among his or her heirs. However, as stated previously, French law protects the reserved portion for certain heirs. The testator cannot fully disinherit these heirs.

A foreign will is valid from a French perspective if it complies with the formalities required by the law of the state where it was drafted; of the testator's citizenship, domicile or habitual residence; or where real estate assets are situated. A foreign law will that disregards the reserved portion of an estate is not necessarily contrary to French international public policy unless its concrete application leads to a situation incompatible with principles of French law considered essential. Finally, the testator must be of sound mind.

## **II. Inheritance procedure**

The process of settling an estate involves four main stages, usually handled by the notary:

1. establishment of the certificate of inheritance (*acte de notoriété*): verification and establishment of the official document confirming the heirs entitled to the deceased person's estate;
2. completion of a comprehensive inventory of the deceased's assets: compilation of a thorough assessment of the deceased person's assets and liabilities;
3. fulfilment of mortgage and tax formalities related to the death: completion of any legal and tax requirements associated with the death, including addressing mortgages on the deceased's property; and
4. drafting an estate partition agreement (optional): preparation of a legal document outlining the partition of the deceased person's assets and debts among the heirs.

In addition to the common steps in all successions, specific procedures may include addressing the presence of a minor child or protected adult among the heirs; requiring consultations with the family council or the guardianship judge; obtaining necessary authorisations; handling specific formalities for certain types of property (eg, businesses or agricultural operations); and employing a genealogist for heir or legatee searches.

An heir has the choice to accept or reject the inheritance within a ten-year period, unless prompted by a creditor, co-heir, subsequent heir or the state through a bailiff's notice (which can only be issued after a four-month period following death). The options for potential heirs include:

- Outright acceptance: This entails the obligation to settle all the deceased's debts without limitation;
- Acceptance *à concurrence de l'actif net*: This means that the heir is responsible for the deceased's debts only up to the value of the inherited assets. This option protects the heir's personal assets and prevents renunciation of the inheritance. To proceed, the heir must file a declaration at the judicial court or with a notary, publish it in an official journal and follow specific timelines, including:
  - a one-month period for publication;
  - a two-month deadline for an inventory;
  - creditors must declare their claims within 15 months; after this period, those who haven't declared lose their right to reimbursement unless they have security interests in the inherited assets; and
  - payment to creditors follows a specific order, and if the estate's assets are insufficient, the heir accepting '*à concurrence de l'actif net*' is not personally liable for unpaid debts.
- Outright renunciation: This means that the heir is considered never to have inherited, receives no assets and is exempt from paying the deceased person's debts.

The statutes of limitation for the action for reduction (corresponding to the claim protecting the heir's reserved portion) is set at five years from the opening of the

succession or two years from the day the heirs became aware of the infringement on their reserved portion, without exceeding a total of ten years from the date of death.

### III. Various tools for planning and anticipation of inheritance

#### A. *Inter vivos* gifts

Simple gifts (*donations simples*) are gifts that can be executed during the donor's lifetime. They are subject to a legal clawback mechanism, meaning that they are integrated back in the succession estate at a value determined at the date of the donor's death to calculate reserved and freely disposable portions.

Due to the significant drawback of simple gifts, it is common practice to use another mechanism of partitioned donation (*donation-partage*) where various assets are gifted and then immediately partitioned in nature among the donees. Such gifts are not integrated back into the succession and their value is definitively determined at the date of the gift and not of death. Fiscally speaking, the 2.5 per cent sharing tax (*droit de partage*) does not apply.

Gifts are contracts that benefit from contractual freedom and can include various clauses such as:

- Limitation of the transfer of ownership:
  - Right of return: the donor gets the gift back in the case in which the donee predeceases the donor (with or without heirs).
  - Withholding usufruct: the donor keeps the temporary right to use and enjoy the property of another person (the bare owner) without altering its substance, usually during the lifetime of the donor (*viager*); sometimes until a fixed term. This split of ownership is key in France. The donor keeps the right to use and perceive the fruits of the gifted asset. There can be a succession of usufruct, whereby usufruct is transferred to a third party on the donor's death, before returning to the bare owner. While a gift of bare ownership reduces the tax basis for gift tax, the extinction of usufruct does not generate additional gift or inheritance tax, unless the donor dies within three months following the gift, based on an anti-abuse rule.
- Limitation of the donee's powers:
  - inalienability: the donee is temporarily prevented from selling the gifted asset;
  - exclusion of community: the donee is prevented from transferring the gifted asset within his or her marital community;
  - 'residual' clause: on the donee's death, he or she must transfer the gifted asset, or what remains of it, to a designated person (the second donee); and
  - 'gradual' clause: on the donee's death, the donee must keep the gifted asset and transfer it to a second donee.
- Other adjustments to the gift:
  - The donor can decide that the gift is deducted in priority from the available portion and not the donee's reserve as an heir (*hors part successorale*).

- The donor can appoint a third administrator to administrate the gifted asset while the donee is underage.
- The donor can anticipate the split and use of the sales price in the case of the sale of the gifted asset where usufruct has been withheld.

With the children's consent, the partitioned donation can even be transgenerational, for instance, where bare ownership is immediately gifted to grandchildren with reversible usufruct to children.

In general, a gift is considered irrevocable, but the right of return (*droit de retour*) provides specific exceptions, thereby ensuring that family assets remain within the bloodline:

- the legal right of return allows parents to reclaim assets that were initially given to children without heirs who predecease the parents. Such a right of return is limited to the parents' reserved portion in the children's inheritance; and
- the contractual right of return must be stated in the gift deed where the donor can opt for its application regardless of whether the predeceased child has heirs. Its application can be extended to the case of the alienation of the gifted asset by the donee to a third party. It is not limited to the donors' reserved portion in the children's inheritance.

A specific tax treatment avoids such back and forth being taxed multiple times.

In principle, such gifts require the involvement of a notary (*notaire*) who plays a crucial role in formalising and authenticating gifts; otherwise, gifts are void unless they qualify as manual gifts.

### *B. Manual gifts (dons manuels)*

These gifts are characterised by their informal and direct nature, often involving not only the physical transfer of items such as cash, jewellery or movable assets but also intangible assets such as stocks (*actions* issued by a *société par actions simplifié* (SAS), *société anonyme* (SA) or *société en commandite par actions* (SCA), to be distinguished from *parts sociales* issued by certain companies, such as civil companies or *société à responsabilité limitée* (SARL) for which the validity of manual gifts is debatable and can be rejected by the company register).

Unlike some other forms of gifts or donations that require a notarial deed, *dons manuels* do not involve such formal documentation, but an attached agreement (*pacte adjoind*) can be registered with the tax form to recognise the existence of such a gift and specify its terms. The transfer of ownership occurs immediately on the physical handover of the gift from the donor to the recipient.

Manual gifts are not taxable unless they are disclosed to the French tax authorities, which is not mandatory. However, they become taxable in the case in which any deed refers to and therefore discloses their existence or in the event of another subsequent gift, and, in any case, on the donor's death at the latest (then subject to inheritance tax and not gift tax).

In practice, it is usually preferable to spontaneously disclose a manual gift that becomes taxable within one month (with an option to defer taxation to the donor's death if the gift exceeds €15,000):

- the tax basis of a manual gift corresponds to the highest amount between the value of the gifted asset either on disclosure or on transfer of ownership;
- registration establishes a certain date, notably to justify the source of funds, for the clawback tax mechanism (see hereafter) and to prevent family conflict; and
- it may allow the application of exemptions for family gifts.

Spontaneous disclosure and declaration shall now, in principle, be done online, on the donee's personal tax account.

Finally, manual gifts must be distinguished from customary gifts/presents (*présents d'usage*). The distinction from a manual gift is sometimes subtle, but the legal and tax consequences can be significant. Customary gifts are usually made for special events that may provide occasions for generosity of small importance compared to the giver's wealth. Being able to distinguish it from a donation is complex in the absence of a legal definition, but crucial: unlike a manual gift, a customary gift does not legally enter succession and is not subject to gift tax. Case-by-case scrutiny is necessary for this.

### C. Estate planning for businesses (*Pacte Dutreil*)

The French Pacte Dutreil and family buy-out (FBO) planning are mechanisms designed to facilitate the transmission of family-owned businesses in the context of inheritance and succession planning.

The Pacte Dutreil, named after a senator, is a complex set of tax provisions aimed at promoting the transmission of family-owned businesses.

To benefit from the Pacte Dutreil, certain eligibility criteria must be met, including the continuity of the business and directorship, a minimum shareholding threshold, and maintaining the shares within the family globally for at least four to six years. Various commitments and formalities must be undertaken.

The main tax benefits of the Pacte Dutreil are a gift or inheritance tax allowance of 75 per cent on the taxable basis; an additional 50 per cent gift tax cut if the donor is below 70 and does not retain the usufruct; and facilities in the tax payment timing.

In the context of a partitioned gift, the option for one specific heir to take over control of the business arises. In this scenario, the designated heir has the opportunity to offset the others by providing a financial adjustment known as a *soulte*. The process of settling the *soulte* can be intricate. Should the siblings request immediate payment and the recipient of the shares finds it necessary to secure a bank loan to finance such a payment, it is possible to consider transferring both the shares and loan to a personal holding company. This strategic move aims to leverage more favourable tax benefits through the quasi-exemption of dividends. This arrangement is called an FBO.

### D. Defining marital status

A couple can live together in:

- cohabitation: no mutual obligations, separate income taxation and no legal protection or inheritance right (unless a will is drafted); highest inheritance tax rate;
- civil partnership ('PACS'): civil agreement, certain mutual obligations, joint income taxation and temporary right of use and occupancy; no legal inheritance right (unless a will is drafted) and exemption from inheritance tax; and
- marriage: solemn legal act with various regimes possible, strong mutual obligations, joint income taxation and compensatory allowance possible in the case of a breach (divorce); the surviving spouse has rights to the inheritance as an heir (can be adjusted) and partially to the deceased's pension, and is exempt from inheritance tax.

Marriage offers various possible regimes impacting the breach of marriage in the case of divorce or death.

- Community with reduced community property (*communauté réduite aux acquêts*): this is the legal regime if no other is opted for (all other regimes require a prenuptial agreement). Only the assets acquired during the marriage are considered part of the joint community property. This excludes assets that were owned by either spouse before the marriage or were acquired through inheritance or gifts during the marriage.
- Separation of property (*séparation de biens*): the spouses maintain separate ownership of their individual assets and there is no joint community property.
- Universal community (*communauté universelle*): all assets, including those acquired before the marriage, are part of the joint community property.
- Participation in acquisitions (*participation aux acquêts*): the spouses maintain separate ownership during the marriage. However, at the end of the marriage, a financial calculation is performed to determine the increase in each spouse's wealth. The spouse with a lesser increase is entitled to compensation from the other.

Spouses can change their prenuptial agreement during the marriage, necessarily involving a notary. Children and creditors can object to this change; such a change would then be subject to the judge's authorisation. Sub-options are also possible within a regime. For example, the separation of property regime allows the couple to set up an 'acquisition company' (*société d'acquêts*), which is not a company but a form of community property where identified assets acquired during the marriage are considered part of a joint property, and each spouse has a share in this joint property. Other clauses can increase or limit the community property, or the other spouse's rights in the case of divorce or death.

For marriages after 29 January 2019, in an international context, France applies Regulation (EU) 2016/1103: the marriage will be governed by the law of the first common habitual residence of the spouses after the celebration of the marriage, unless the spouses choose otherwise.

### *E. Life insurance*

In France, life insurance is known as *assurance-vie*. It is a financial product that combines elements of insurance and savings or investment; the policyholder can



proceed to partial withdrawals during his or her lifetime. *Assurance-vie* is widely used for wealth management, retirement planning and estate planning.

*Assurance-vie* is a contract between an individual (policyholder) and an insurance company. The policyholder pays premiums to the insurance company, which, in turn, provides coverage and investment opportunities. Policyholders can choose from a range of investment options and specific asset allocation strategies.

In the event of the policyholder's death, the beneficiaries receive a death benefit. Life insurance allows policyholders to designate beneficiaries and facilitate the transfer of assets to heirs and/or third parties. The beneficiary clause must be drafted carefully, and various mechanisms can apply (eg, usufruct).

Unless otherwise stated in the life insurance contract, such a death benefit is not subject to the succession rules and is not limited to the freely disposable portion of the deceased. However, premiums that are clearly excessive in a life insurance contract may be subject to reduction for infringement on the reserved portion.

*Assurance-vie* benefits from preferential treatment regarding inheritance tax. The taxation of the death benefit depends on factors such as the age of the policyholder, date of subscription, date of the premium payments, the relationship between the policyholder and the beneficiaries. For policies subscribed to since 20 November 1991 and premiums paid since 13 October 1998:

- surviving spouse or, in restrictive circumstances, the surviving cohabiting sibling: exemption of any taxation; and
- other beneficiaries:
  - premiums paid before 70 years old: death benefit is taxable, with a tax allowance of €152,500 *per* beneficiary; beyond that, tax is withheld by the life insurance company (20 per cent up to €700,000 *per* beneficiary, and 31.25 per cent beyond); and
  - premiums paid after 70 years old: premiums paid are part of the inheritance tax basis with an extra tax allowance of €30,500 for all beneficiaries. Gains are exempt.

#### *F. Foreign trusts*

While trusts are not currently recognised in French law, they can have effects in France when established abroad. The validity of foreign trusts is subject to certain conditions, including compliance with the laws of the relevant country; not conflicting with French public policy; respecting specific conditions related to inalienability clauses; the French reserved portion of inheritance; and rules regarding gifts to future individuals.

A specific tax framework was introduced in 2011, providing rules and principles for the application of the French General Tax Code to trusts. The definition of a trust in this context includes all legal relationships created in a state other than France by a person (settler) through an *inter vivos* or testamentary act, with the aim of placing assets or rights under the control of a trustee for the benefit of one or more beneficiaries or the achievement of a specific objective. The French tax administration considers all relationships that meet this definition as trusts, regardless of their formal name or characteristics.

The settler of the trust is considered either the individual who established it or, in the case of establishment by a professional individual or legal entity, the individual who placed assets and rights into the trust. The latter clarification aims to cover situations in which a financial institution establishes a trust, but a different individual subsequently places assets, becoming a 'quasi-settler'.

French tax law distinguishes between two main issues: the inclusion of French assets into a trust and the transfer of assets or rights within a trust.

In the case of the inclusion of French assets in a trust:

- for revocable trusts, it is generally agreed that there is no actual removal of assets from the settler's estate, and thus, there is no gift or inheritance tax; and
- in the case of irrevocable trusts, challenges arise as the trustee becomes the legal owner of the assets. However, the concept of an 'indirect donation' might be relied on to consider the inheritance or gift tax to be triggered only on the genuine transfer of the assets to the beneficiaries (usually on termination of the trust).

In the case of the transfer of assets or rights within a trust, various scenarios are possible. If the transfer of assets or rights within a trust qualifies as a donation or succession, the transfer is subject to standard gift or inheritance tax, depending on the relationship between the settler and beneficiary. The rule aligns with the standard transfer principles and applies when the donation or succession can be clearly established. If the assets placed in the trust return to the settler, such a transfer may remain non-taxable as a 'reimbursement'.

In other cases when transfer through trusts cannot be classified as donations or successions under standard rules, a specific *sui generis* tax applies. This tax applies whether the assets, rights or capitalised products are transferred at the settler's death or a later date. The legislator aims to align this rule with standard principles, considering the settler's death as the triggering event for the transfer. The taxation depends on whether the portion allocated to each beneficiary is determined or not at the settler's death.

- Cases in which the beneficiary's share is determined: If, at the date of death, the portion of assets, rights or products due to a beneficiary is determined, inheritance tax applies based on the relationship between the settler and beneficiary. The value of these assets is added to other assets in the inheritance return for the application of tax rates, exemptions and allowances.
- Cases in which the beneficiary's share cannot be determined:
  - if, at the date of death, a determined portion is collectively due to the descendants of the settler without individual distribution, a flat *sui generis* tax rate applies (maximum rate for direct descendants, ie, 45 per cent). The trustee is accountable for its payment, and the beneficiary can be severally liable if the trust is governed by a non-cooperative jurisdiction; and
  - in other cases, such as when assets remain in the trust or there is a collective transmission involving non-descendants of the deceased settler, a different *sui generis* tax rate applies (maximum rate for collateral relatives and non-relatives, ie, 60 per cent). The trustee is accountable

for its payment and the beneficiary can be severally liable if the trust is governed by a non-cooperative jurisdiction.

Successive transmissions through trusts rely on the concept of the 'fiscal settler' for the application of transfer duties. The beneficiary is considered to be a settler for the application of inheritance rules, whether classified as donations, succession or subject to *sui generis* tax. If assets and rights remain in the trust through generations, taxation occurs according to the same rules for each successive beneficiary. In addition, the beneficiary is considered to be a fiscal settler, even if the assets were not taxed due to international tax treaties.

If the beneficiaries receiving the assets exiting the trust are the same as those identified in the last succession and the partition is identical, it is considered a tax-free exit, which does not trigger a new taxable transfer. However, if there is no perfect match between the beneficiaries or if the partition differs, a gift tax may apply, considering the first beneficiary as having made a donation to the new recipient.

The distribution of trust products, if taxed as income tax during distribution, usually does not incur inheritance, gift or *sui generis* tax upon exit. Documentation proving the nature and amount of distributed proceeds may be required. In the case of trust dissolution, taxation follows similar principles.

Territorial rules for inheritance tax apply, depending on the fiscal domicile of the settler or beneficiary and the location of the assets (see the tax territorial rules). If a tax treaty covers inheritance or gift tax, the existence of the trust does not affect its application. In most cases, tax treaties covering inheritance and/or gift tax should prevent French taxation on trust assets or rights when the settler is not domiciled in France, and the assets are not situated in France, even if the beneficiary is tax-resident in France.

### *G. Family companies*

Family companies can be used to manage family assets (contributed by their shareholders or purchased). They can adopt the form of civil companies (eg, *société civile immobilière* (SCI), ie, a real estate civil company, or *société civile de portefeuille* (SCP), ie, a civil company managing financial assets) or commercial companies. Civil companies are tax transparent in principle, but can opt for corporate income tax, which allows significant flexibility for income tax purposes.

They simplify the process of estate tax planning by offering the option to divide ownership at the company's level (through its shares). In this arrangement, the donor can gift the shares' bare ownership to his or her heirs while retaining usufruct.

In addition, the governance structure is flexibly established through the articles of association, allowing, for instance, for the inclusion of provisions that make the directorship irrevocable. This allows a separation between the management and ownership of the assets. Finally, the articles of association usually provide for an approval clause for the admission of new partners.

Additional tax advantages arise when using a family company. For instance, certain allowances on capital gains are determined by the holding period, and these

computations can be applied to the asset or share levels, depending on the nature of the transfer. The division into shares eliminates the need for partition, thereby exempting the transaction from the usual 2.5 per cent 'sharing tax'. Moreover, discounts can be applied when assessing the fair market value of shares, a critical factor for wealth tax, gift tax or inheritance tax calculations, all of which are contingent on the assets' fair market value.

#### **IV. Legal incapacity or vulnerability**

Various regimes exist to protect an adult who lost legal capacity (*sauvegarde de justice*, *curatelle* and *tutelle*, notably). Members of the adult's family or, by default, the judicial proxies dedicated to adult protection (*mandataires judiciaires à la protection des majeurs*) remunerated by fees established by law, have a legal duty to protect such a person and his or her estate free of charge.

The mandate for future protection (*mandat de protection future*) is an interesting alternative: it allows individuals to plan for the possibility of incapacity in the future. The *mandat de protection future* enables someone to designate a trusted person (or different trusted persons depending on the matter) to act on his or her behalf and make decisions concerning personal, health and financial matters if the individual becomes incapable of doing so him or herself.

Wealth management of underage children (ie, below 18) is, in principle, covered by parental authority. Parents have a legal right to use their children's assets until their majority or emancipation, and benefit in principle from their non-professional revenues until they turn 16. A parent deciding to gift or to leave by will an asset to a child can appoint a third administrator (*tiers administrateur*) who will manage such an asset for the child.

Certain particularly serious acts still require the authorisation of the guardianship judge (*juge des tutelles*), even if both parents agree. Furthermore, the guardianship judge is empowered to intervene in the event of a disagreement between the parents. Finally, some acts are prohibited, even with the authorisation of the guardianship judge.

#### **V. Inheritance and gift tax regime**

In addition to the following tax implications, notary fees are usually regulated by law depending on the nature and value of the transaction.

##### *A. Inheritance tax*

An inheritance tax return must be filed and tax must be paid within six months of death, along with the submission of the inheritance tax return (extended to one year for a deceased person who passed away outside of France). Under conditions and, notably, when the heirs provide guarantees, payment can be made through instalments over three years due to the estate's illiquidity (eg, the estate is mainly composed of real estate) with interest.

In the case of delays in paying inheritance tax, an interest rate of 0.2 per cent per month is applied by the tax authorities and a penalty of ten per cent is imposed starting

from the 13th month after death. Heirs are, in principle, severally liable for the full payment of inheritance tax.

The taxable net amount corresponds to the difference between the fair market value of the assets and liabilities of the estate. The taxable net assets are distributed among the heirs based on the order of inheritance and considering any previous donations.

The portions bequeathed to each heir of the taxable net assets represent the taxable inheritance assets.

A tax allowance may apply to the calculation base of the inheritance tax due, depending on the heirs' relationship with the deceased and their personal situation. The deduction levels vary:

- €100,000 for a child or parent;
- €15,932 for a brother or sister;
- €7,967 for a nephew or niece;
- €1,594 in the absence of another applicable deduction (eg, grandchildren); and
- people with disabilities meeting certain conditions receive an additional tax allowance of €159,325.

The taxable portion after the allowance is then subject to a progressive scale that varies depending on the heir's relationship with the deceased:

- Scale for direct heirs (father, mother, child and grandchild):
  - up to €8,072: five per cent;
  - €8,073 to €12,109: ten per cent;
  - €12,110 to €15,932: 15 per cent;
  - €15,933 to €552,324: 20 per cent;
  - €552,325 to €902,838: 30 per cent;
  - €902,839 to €1,805,677: 40 per cent; and
  - over €1,805,678: 45 per cent.
- Scale for siblings:
  - up to €24,430: 35 per cent; and
  - over €24,430: 45 per cent.
- Inheritance tax for heirs up to the fourth degree (uncle, aunt, nephew and niece):
  - taxed at a single rate of 55 per cent.
- Inheritance tax for other heirs:
  - taxed at a single rate of 60 per cent.

If one of the heirs is already deceased (or 'purely' renounces on the succession), the principle of representation comes into play: representation allows the descendants (usually children) of a deceased (or renouncing) heir to step into the shoes of that heir and inherit his or her share of the estate, which also impacts the applicable tax allowance and scale.

Other exemptions may apply, the most important one being the exemption of inheritance tax between spouses or partners under a 'PACS'.

Finally, a tax 'clawback mechanism' (*'rappel fiscal'*) is used to calculate the inheritance tax that heirs must pay, involving the inclusion of certain assets in the inheritance. When someone passes away, the notary compiles an inventory of his or her assets, incorporating both the assets owned at the time of death and any donations made, except for those registered for gift tax purposes more than 15 years ago. Those donations are not taxable twice, but are taken into account to apply tax allowances and the progressive scale.

### *B. Gift tax*

Gift tax computation is quite similar to inheritance tax rules. One must first consider the fair market value of the donation, then apply the relevant tax allowances and rates under the same rules as for inheritance tax, with the following specificities. The tax clawback mechanism also applies, meaning, for example, that tax allowances are renewed every 15 years.

There is no exemption from gift tax between spouses, but a tax allowance of €80,724. Children benefit from a €100,000 tax allowance, but grandchildren benefit from €31,865 (compared to €1,594 for inheritance tax purposes).

People with disabilities that meet certain conditions receive an additional deduction of €159,325.

The progressive tax scales are the same as for inheritance tax. The following scales apply for spouses:

- up to €8,072: five per cent;
- from €8,073 to €15,932: ten per cent;
- from €15,933 to €31,865: 15 per cent;
- from €31,866 to €552,324: 20 per cent;
- from €552,325 to €902,838: 30 per cent;
- from €902,839 to €1,805,677: 40 per cent; and
- more than €1,805,677: 45 per cent.

Cash gifts given in full ownership to a child, grandchild, great-grandchild, or, in the absence of such descendants, a nephew or niece, or by representation, a great-nephew or great-niece, are exempt from gift tax up to €31,865 every 15 years. The donor must be under 80 years old at the time of the transfer and the recipient must be at least 18 years old or have been emancipated at the time of the transfer.

Other specific tax regimes apply to gifts; some of them are mentioned throughout the present guide.

The transfer of real estate property would trigger additional registration duties for publication (ca 0.715 per cent of their fair market value).

### *C. International gift and inheritance tax*

In the absence of a tax treaty, French gift and inheritance tax are primarily determined by their 'domicile'. Domicile is a legal concept that goes beyond mere residence or the computation of days spent in various jurisdictions.

Donors or deceased persons who are domiciled in France for tax purposes trigger French gift and inheritance tax on worldwide assets. Likewise, worldwide assets are subject to gift and inheritance tax if donees or heirs are domiciled in France for tax purposes and have been so for at least six of the last ten years, even though the donor or deceased person is non-domiciled.

In both cases, a foreign tax credit can apply, even in the absence of a tax treaty. The amount of inheritance and gift taxes paid, if any, outside France is creditable against the tax due in France. This credit is limited to French tax attributable to movable and immovable property situated outside France.

French gift and inheritance tax remain applicable to French-situated assets only, in other cases, that is, where the domiciliation criteria are not met. Specific definitions apply to real estate (real estate companies and indirectly owned real estate property).

France has concluded several tax treaties with various countries that may impact the taxation of gifts and inheritance, including provisions to avoid double taxation. Their number is much more limited than for income tax because a domestic mechanism to limit double-taxation already exists. They must be analysed on a case-by-case basis, especially because they might prevent France from applying inheritance or gift tax if French inheritance or gift tax is triggered only based on the donee's or heir's tax domicile.

Certain concepts, such as the tax clawback mechanism or manual gifts, generate significant difficulties in their application in an international context, for example, where gifts have been made in another jurisdiction before one of the parties becomes a tax resident of France. These situations must be closely scrutinised.

#### *D. Anti-abuse rules*

Article L64 of the Tax Procedures Code (Livre des procédures fiscales or LPF) defines acts that constitute an abuse of tax law as acts having a 'fictitious nature' or acts 'seeking the benefit of a literal application of texts or decisions against the objectives pursued by their authors [...] inspired by no other motive than to elude or mitigate tax burdens'.

Thus, an abuse of tax law involves a taxpayer using fictitious arrangement(s), meaning that their legal appearance is unrelated to reality. In such cases, a strong penalty of 80 per cent will apply, and conversely, a dedicated procedure with specific rights for the taxpayer has to be complied with by the French tax authorities. A criminal procedure can also be initiated.

Moreover, the 2019 Finance Law introduced a new Article L64 A of the LPF, extending this procedure to taxpayers' tax manoeuvres carried out with the 'principal' motive – no longer just an 'exclusive' motive – of evading or mitigating their tax burdens (also referred to as 'small abuse of law'). This article indicates that a 'small' abuse only concerns acts that combine both an 'objective' element (the use of a provision against the intentions of its author) and a 'subjective' element (the main intention to evade tax). These combined elements are found, for example, in economically unsubstantial

schemes carried out for tax purposes. Conversely, the required objective element automatically excludes all tax incentive schemes encouraged by legislation, such as certain early transmissions of assets, which remain permissible.

These anti-abuse rules must be closely monitored, especially in an international context with EU DAC-6 reporting obligations and when seeking to benefit from tax treaties.

*This International Estate Planning Guide aims at providing a global overview of civil and tax law mechanisms related to succession. It is not meant to be exhaustive nor to cover other relevant tax areas (eg, income tax and wealth tax). We recommend seeking advice from a French expert for all cases that have a direct or indirect nexus with France.*