

Private Client Law in France: Overview

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TAXATION

Tax Year and Payment Dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

For individuals, the French tax year follows the calendar year of 1 January to 31 December.

Individuals must file an annual personal income tax return in the year following that in which the income was received (usually in May).

Personal income tax payments are made through a Pay as You Earn system, under which tax is withheld on most types of income. Balance payments or refunds are settled the following year (between September and December).

Property tax, abode tax and real estate wealth tax (*Impôt sur la fortune immobilière*) are assessed on assets owned on 1 January, and must be paid between September and November of the same year.

Domicile and Residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

French tax residents are subject to tax in France on their worldwide income. Under French domestic law, individuals are taxed in France if they have their domicile in France. Subject to the application of a double tax treaty, individuals are considered to be domiciled in France for tax purposes if they fulfil at least one of the following criteria:

- Their household (including spouse or civil partner and/or children) is in France. For single people, the tax residency is the country in which the individual spends most of their time.
- They have their principal professional activity in France, whether as an employee or not. Executives of companies with their headquarters in France and an annual turnover exceeding EUR250 million are deemed to perform their principal professional activities in France.
- They have the centre of their financial interests in France.

Subject to applicable tax treaty provisions, non-French resident individuals are only subject to tax on their French-source income.

The concept of citizenship is not relevant to tax under domestic law.

Residence

When applicable, the concept of tax residency used in double tax treaties typically prevails over the French domestic concept of domicile. Most of the tax treaties signed by France provide that an individual is resident in France if one of the following sequential criteria is met:

- The taxpayer has a permanent place of residence in France that is their habitual place of residence or that of their family (spouse and children).
- If there are dual permanent residences, the taxpayer has their centre of financial and personal interests in France.
- If the above cannot be determined, the taxpayer's primary place of residence is in France (that is, they spent more than 183 days in France in the relevant year).
- If none of the above criteria can be determined, residence in France would be attributed to a person holding French citizenship.

Taxation on Exit

3. Does your jurisdiction impose any tax when a person leaves and/or renounces their citizenship (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Since French domestic taxation is based on tax residency and not on citizenship, renouncing French citizenship does not trigger any tax consequences.

However, a transfer of tax residency outside France can trigger personal income tax and social contributions on:

- Deferred and unrealised capital gains on shares, securities or financial rights.
- Receivables arising from an earn-out clause.
- Capital gains subject to deferred taxation.

This exit tax applies to any individual who both:

- Has been a French tax resident for six of the last ten years preceding the exit.
- Owns stocks or shares with a value equal to or greater than EUR800,000, or representing at least 50% of a corporate body's profits.

The exit tax on deferred and unrealised capital gains can be put on hold automatically or on request, subject to certain undertakings and warranties provided to the French tax authorities and depending on the state to which the transfer is made.

A deferred exit tax relief may be possible after a certain period in some circumstances. In particular, there is a full rebate if the

shares or receivables subject to exit tax are kept by the taxpayer for a certain period after the date of the taxpayer's effective departure from France. This period varies from two to 15 years depending on the date of departure.

Temporary Residents

4. Does your jurisdiction have any particular tax rules affecting temporary or partial year residents?

In principle, temporary residence in France does not trigger taxation of individuals as long as they do not become French tax residents due to their stay in France (see *Question 3*). In particular, time spent in secondary homes in France should not affect an individual's tax status.

French law provides for a favourable temporary regime for individuals who were not French tax residents during the five calendar years before being employed by a company based in France (*régime des impatriés*). For a maximum of eight years and subject to a cap, such individuals can be exempted, partially or fully, from personal income tax on their:

- Impatriation bonus (or part of their salary considered as such).
- Income relating to work carried out abroad.
- Non-French source passive income.

Such individuals may also benefit from a temporary exemption from real estate wealth tax for non-French assets.

Taxes on the Gains and Income of Foreign Nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Non-tax residents are subject to personal income tax on capital gains derived from the sale of real estate company shares and rights, as well as properties located in France.

Such capital gains are subject to:

- Personal income tax at 19%.
- Social contributions at 17.2% (or 7.5% if the transferor is affiliated to a non-French compulsory social security scheme in an EEA state or Switzerland).

An additional surtax applies to gains exceeding EUR50,000.

In certain circumstances, non-tax residents are taxable on capital gains realised on the disposal of French company shares if the securities they hold (along with those held by their relatives) represent at least 25% of the share capital of the French issuer. Subject to the application of a double tax treaty, a withholding tax applies at a 12.8% rate (or 75% if the transferor is established in a non-cooperative tax jurisdiction).

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

A non-tax resident must typically report personal items of French-source income that are taxable in France under the relevant double tax treaty. Subject to the particular double tax treaty, the main items of reportable French-source income are:

- Salaries or wages remunerating an employed professional activity carried out in France: subject to withholding tax at progressive rates from 0% to 20%.
- Pensions of any kind (retirement, alimony, and so on): subject to withholding tax at progressive rates from 0% to 20%.
- Sums paid in return for artistic and sporting performances provided or used in France: subject to withholding tax at 15%.
- Non-wage income paid by a debtor who carries out activities in France to beneficiaries who do not have a permanent place of business in France (this targets non-commercial profits such those as from cultural professions): subject to withholding tax at the corporate income tax rate of 26.5% (25% from 2022).
- Proceeds derived from intellectual, industrial or commercial property or similar rights when the payer carries out an activity in France: subject to withholding tax at the corporate income tax rate of 26.5% (25% from 2022).
- Dividends: subject to withholding tax at 12.8%.
- Capital gains (see *Question 5*).
- Income derived from real estate located in France (such as rent): subject to personal income tax at progressive rates up to 45%.

However, a 75% withholding tax may still apply when these proceeds are paid to a beneficiary located in a non-cooperative tax jurisdiction.

Depending on the type of income, the withholding tax might not be final. In such a case, it may be possible to credit the withholding tax against the amount of personal income tax effectively owed in France.

Tax at Death

7. What taxes are imposed on the death of an individual? What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Inheritance and gift taxes apply in France to:

- Worldwide assets owned by a deceased who had their domicile in France at the time of death, or a donor with domicile in France at the time of donation.
- Worldwide assets received by French-resident heirs (or donees) when the:
 - deceased did not have their domicile in France at the time of death (or the donor did not have domicile in France at the time of donation); and
 - heirs (or donees) were domiciled in France on the date of transfer, and for at least six years over the previous ten years.
- French assets (real estate property located in France and claims or securities whose debtor/issuer is tax resident in France) when neither the deceased/donor nor the heir/donee is resident in France.

This position may be subject to applicable provisions in a tax treaty between France and the state where either the donor, the donee, the heir or the deceased is resident. Inheritance or gift tax applies to the net taxable asset. The tax rate is progressive and varies depending on the relationship between the deceased (or donor) and the heir (or donee) (see *Question 8*).

8. What are the rates of tax for each type of tax levied at death?

Tax Rates

Inheritance and gift tax is payable at progressive rates depending on the relationship between the deceased (or donor) and the heir (or donee) as follows:

- Children and other relatives in direct descending or ascending line:
 - up to EUR8,072: 5%;
 - between EUR8,072 and EUR12,109: 10%;
 - between EUR12,109 and EUR15,932: 15%;
 - between EUR15,932 and EUR552,324: 20%;
 - between EUR552,324 and EUR902,838: 30%;
 - between EUR902,838 and EUR1,805,677: 40%;
 - over EUR1,805,677: 45%.
- Brothers and sisters:
 - up to EUR24,430: 35%;
 - over EUR24,430: 45%.
- Relatives up to the fourth degree (nephews, nieces): 55%.
- Others: 60%.

Tax Free Allowance

The following tax-free allowances apply to the share of each heir (or donee):

- Children: EUR100,000 per parent.
- Parents or other relatives in direct ascending line: EUR100,000.
- Grandchildren or other relatives in direct descending line: EUR1,594.
- Brothers or sisters: EUR15,932.
- Relative up to the fourth degree in collateral line (that is nephews and nieces): EUR7,967.
- Disabled persons: EUR159,325.
- Others: EUR1,594.

Exemptions

No inheritance or gift tax applies:

- Between spouses or civil partners.
- To certain assets (such as historical monuments, pieces of art or collectors' items) given to the state or certain public bodies.
- To recognised charities (see *Question 42*).
- To inheritances received from certain persons (such as civil servants who die in the course of their duties, victims of war or terrorism, and so on).
- To a certain type of assets, such as a survivor's pension.

Subject to certain conditions, partial exemptions from inheritance and gift tax may apply to assets such as:

- Woodland and rural properties.
- Payments under insurance policies.
- Certain shares or interests in companies or businesses that operate under favourable tax regimes.
- Certain real estate assets.

Gifts of money up to EUR31,865 every 15 years between relatives are exempt from tax when made by persons aged less than 80 years to a beneficiary aged at least 18 years.

Techniques to Reduce Liability

Liability can be reduced through different estate planning mechanisms, including:

- Gifts during the testator's lifetime (making use of the tax-free allowances).
- Gifts of the bare ownership of assets (instead of the whole ownership).

A specific regime (*Pacte Dutreil*) is also available to mitigate gift and inheritance tax liability on the transfer of shares of certain companies that are subject to a collective holding undertaking where, for example:

- The shares are held for a certain period of time by both the donor(s) and the beneficiary(ies).
- One of the beneficiaries exercises their main professional activity in the company for at least three years.

This regime is only available to the transfer of entities carrying out an industrial, commercial, craft, agricultural or liberal (that is legal, medical, technical and artistic) activity. Therefore, entities carrying out civil activities are in principle excluded from the benefit of this regime. However, intermediary entities directly or indirectly owning qualifying entities may also benefit from this regime under certain conditions.

If these conditions are met, 75% of the value of the shares subject to the collective undertaking may be exempted from tax.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

For real estate assets located in France, inheritance and gift tax applies irrespective of the domicile of the deceased (or donor) or the heir (or donee). For other assets, this depends on their nature (see *Question 8*) and the tax residency of the heir (or donee).

10. Are there any other taxes on death or on lifetime gifts?

No other tax is levied on the death.

Cross-border transfers of assets on death or through gifts do not trigger any exit tax.

Taxes on Buying Real Estate and Other Assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and Gift Taxes

Transfer tax applies on the acquisition of real estate located in France at about 5.1% to 5.8% (plus 0.6% on offices, commercial and storage properties in Ile de France) on the acquisition price. In addition, notary fees apply at about 0.8%.

If the acquisition is subject to VAT, transfer tax is reduced to 0.715%. For acquisition through a gift, see *Question 8*.

In both cases, an additional registration duty applies at 0.1% on the fair market value of the property bought or given.

VAT

VAT is only applied on the sale of real estate assets where the seller is a VAT taxpayer and acting as such (that is, in the context of its economic activity). If so, the sale is either:

- Automatically subject to VAT where the asset is deemed to be a new building (built or heavily renovated less than five years ago) or land intended for development.
- Potentially subject to VAT on the exercise of an option by the seller in other situations.

Wealth Taxes

French real estate wealth tax applies to foreign tax residents who own real estate property and real estate company shares or rights located in France with a net value exceeding EUR1.3 million. An annual levy at progressive rates ranging between 0% and 1.5% applies to the net value of their French real estate assets.

Other

Regardless of their tax residency, real estate owners pay local taxes annually in the form of housing and property taxes. The applicable rates depend on various factors such as the location and the size of the property. Such taxes are collected yearly by the local authorities.

An annual 3% tax assessed on the French property's value may be due when an individual indirectly owns the property through certain French or foreign entities. However, in most cases, this tax can be avoided by disclosing the personal identities of the indirect individual owners of the French real estate assets.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

The choice of the most tax-advantageous holding structure depends on the purpose of the real estate holding (personal use or investment) as well as other matters such as place of tax residency of the owner, applicable tax treaties, exit strategy and so on. Holding the assets through a legal entity can sometimes reduce the tax liability.

Taxes on Overseas Real Estate and Other Assets

13. How are residents in your jurisdiction taxed on real estate or other assets owned outside of the jurisdiction?

Subject to the provisions of a relevant tax treaty, French tax residents are subject to personal income tax in France on all

income derived from real estate or other assets, including capital gains on the disposal of such assets.

Foreign real estate assets or rights are also included in the tax basis of the French real estate wealth tax for French residents. This applies at progressive rates between 0% and 1.5% to the net value of their worldwide real estate assets, where the net value of the real estate assets exceeds EUR1.3 million.

International Tax Treaties

14. Is your jurisdiction a party to many tax treaties with other jurisdictions?

France has a broad tax treaty network covering more than 120 countries. Some of these treaties cover income as well as wealth tax, inheritance tax and gift tax.

Most French treaties follow the Organisation for Economic Co-operation and Development's (OECD's) Model Tax Convention on Income and on Capital. In addition, France has ratified the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (more than 70 treaties are covered).

French treaties usually contain a general anti-avoidance rule and/or provisions limiting benefits to effective beneficiaries of certain types of income (notably for dividends).

Automatic Exchange of Tax Information

15. Has your jurisdiction implemented the Organisation for Economic Co-operation and Development's (OECD's) multilateral Common Reporting Standard (CRS) into its domestic law?

France has implemented the CRS into its domestic law.

WILLS AND ESTATE ADMINISTRATION Governing Law and Formalities

16. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

A will does not necessarily have to be drafted in France or governed by French law to effectively cover French assets. A foreign will can dispose of French property if it is both formally and substantially valid.

A will is formally valid if it satisfies the requirements of HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention), of which France is a signatory. Foreign wills can only be executed on assets located in France after they have been registered in France.

17. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

French law allows for different types of will with different formalities, as follows:

- **Holographic will.** This must be written in full, dated and signed by the testator's hand. After the testator's death, the holographic will must be submitted to a notary to be executed.

- **Authentic will.** The testator dictates the will to a notary. It must be signed by either two notaries, or one notary and two other witnesses.
- **Sealed will.** The testator writes the will themselves and the closed and sealed document is submitted to a notary in the presence of two witnesses.
- **International will.** The will can be written in French or in a foreign language. It is valid regardless of the country in which it was written, location of the property, or nationality, domicile or residence of the testator. It must be signed by a notary and two witnesses and then registered. The content of the will can remain secret.

Except for authentic wills, registration of the will is optional on its drafting. However, registration is required to ensure full enforceability and to certify the date of execution.

The registration fees amount to EUR125.

Electronic Wills

18. Is it possible for a will to be made electronically? What are the formalities for making and executing an electronic will remotely?

Electronic wills do not exist in French law. However, the intervention of a third party or a witness is not required for a holographic will if it is entirely handwritten (see *Question 18*).

During the COVID 19 pandemic, a decree made it possible to temporarily waive the requirement for a physical presence at the notary's office to execute notarial acts. However, this was limited to the period of the state of health emergency (which should end on 15 November 2021).

However, notaries are allowed to go to testators' places of residence to collect wills.

Redirecting Entitlements

19. What rules apply if beneficiaries redirect their entitlements?

The beneficiaries of a will cannot make a post-death variation. The testator is the only person with the right to change the will (*révocation*), and beneficiaries cannot redirect their entitlements.

However, beneficiaries can choose between:

- **Unconditional acceptance.** The beneficiaries receive their share of the inheritance and must pay the deceased's debts to the extent of their rights in the estate (there is no limited liability).
- **Conditional acceptance (*acceptation à concurrence de l'actif net*).** The acceptance is made subject to the value of assets received exceeding the beneficiary's share in the deceased's debt.
- **Renunciation.** The heir waives their rights to inherit both assets and liabilities. In such case, the renouncing heir's share falls to the renouncing heir's heirs. Therefore, renunciation can be seen as an asset transfer strategy and a way to indirectly redirect the entitlements. If the renouncing heir does not have heirs which accept the inheritance, the share then goes to the other co-heirs.

Validity of Foreign Wills and Foreign Grants of Probate

20. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of Foreign Wills

France has ratified the Hague Testamentary Dispositions Convention governing international wills. Therefore, a will is valid as long as it complies with the forms prescribed by the law of the state governing it.

Validity of Foreign Grants of Probate

A will subject to foreign law must follow the locally required procedural formalities. A court decision rendered abroad and probating a will must then obtain *exequatur* in France.

Wills made abroad must be registered in France to be executed in France.

Death of Foreign Nationals

21. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

If the deceased foreign citizen was a French tax resident on death, the succession will be opened in France for the deceased's entire estate.

If the foreign national resided abroad, a French notary will only deal with the succession if it includes real estate located in France. If this is the case, the notary will draw up the affidavit (*acte de notoriété*) and a real estate certificate for the person in charge of the succession (see *Question 23*).

Administering the Estate

22. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for Administering

The heirs are collectively responsible for administering the estate. The heirs can carry out acts to protect and administer the assets but cannot dispose of them.

The heirs or, in the event of disagreement, a judge at the request of any interested party, may appoint a representative after the death to manage or administer the estate in the heirs' interests.

The deceased may also appoint a future agent to administer the estate in a posthumous mandate. This role should be distinguished from the executor responsible for supervising compliance with the provisions made by the testator. In the event of a conflict of powers, the executor takes precedence over the agent administering the estate.

Vesting

When a person dies, the legal heirs are automatically and immediately vested with ownership of the deceased's assets. In their capacity as successors, they benefit from *saisine*, the right to take possession and exercise their rights over the deceased's estate without any formality. However, they will benefit from the full authority over the property only after completing all civil and tax formalities.

The testator can choose to have the estate to vest in the executor, which, among other things, allows the executor to sell the assets and distribute the proceeds to the beneficiaries designated by the testator.

23. What is the procedure on death in your jurisdiction for tax and other purposes in relation to establishing title and gathering in assets (including any particular considerations for non-resident executors), paying the necessary taxes and distributing the estate?

Establishing Title and Gathering in Assets

The notary will first draw up an affidavit (*acte de notoriété*) listing the heirs and their respective rights. The notary then lists the deceased's assets and liabilities.

Procedure for Paying Taxes

The notary then carries out the tax formalities related to the death, including:

- Drafting the declaration of inheritance.
- Calculating the tax owed by the heirs and collecting it on behalf of the French tax authorities within six months of the death.
- Drafting a certificate for any transferred real estate property and publishing this in the land registry (*service de publicité foncière*).

Distributing the Estate

The heirs may decide not to share out the estate and to remain in co-ownership (*indivision*). Otherwise, assets are divided out between the heirs according to the declaration of inheritance.

24. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

When the heirs accept the estate, they must file a declaration of inheritance with the French tax authorities. This declaration must be filed within six months of the date of the death. However, for persons who die abroad, this filing period is extended to 12 months.

25. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

A beneficiary or any person with an interest in the legal action can challenge a will through the following actions:

- **An "action in reduction"**. When a will infringes an heir's forced heirship, they can act to recover the share of the estate that is due to them before a judge within five years from the opening of the estate.
- **Judicial revocation**. This is an action aiming to render the will null and void and to deprive it of any effect for the future. A will may be revoked based on:
 - the ingratitude of the donee/legatee;
 - the birth of a child to the donor;
 - the non-execution of conditions imposed by the testator.
- If the action is based on a child's birth or non-execution of the testator's conditions, it must be brought within five years from the date the child was born or the conditions stopped being executed. If it is based on the ingratitude of the donee/legatee, the action must be brought within one year of the offence.

- **Judicial annulment**. This enables the retroactive annulment of the will if the testator did not respect the rules of substance and form in making the will. The will can only be challenged after the testator's death by a person who should have received bequeathed property in place of a legatee. The limitation period is five years from the death or the day when the interested party became aware of the existence of the defective will.

A beneficiary can challenge the appointed representative or the executor. The representative and the executor are personally liable in the event of a fault harming the heirs, legatees or third parties such as inheritance creditors.

SUCCESSION REGIMES

26. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

French law provides for a forced heirship regime. The estate is divided into two parts:

- The "reserved portion" retained for the heirs benefiting from the forced heirship regime.
- The "available portion" that the donor can dispose of freely.

The reserved portion is defined as follows:

- 1/2 of the estate for one child.
- 2/3 of the estate for two children.
- 3/4 of the estate for three or more children.
- 1/4 of the estate for the surviving spouse in the absence of children or other descendants (see *Question 30*).

Gifts made by the testator during the entirety of their lifetime are included in the reserved portion to ensure equality between the heirs.

Forced Heirship Regimes

27. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Avoiding the Regime

In principle, if French law applies to the succession, the forced heirship regime cannot be avoided. However, depending on the factual situation, estate planning (such as life insurance) can provide solutions to limit the effects of forced heirship regime.

Assets Received by Beneficiaries in Other Jurisdictions

If French law applies to the succession, it will apply to the whole estate of the deceased, including assets received by foreign beneficiaries.

Mandatory or Variable

Before the testator's death, an heir can renounce all or part of their share of their future inheritance through a family agreement (*pacte de famille*) signed before two notaries. The heir can also renounce the estate after the death of the testator (see *Question 19*).

Real Estate or Other Assets Owned by Foreign Nationals

28. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation) determines the law applicable to the succession. In the absence of a choice by the deceased, the succession will be subject to the laws of the country in which the deceased had their last habitual residence, irrespective of the location of the assets or their nature.

In relation to tax (for which the Succession Regulation is not relevant), on the death of a foreign national French tax resident, the assets are taxed in France (see *Question 7*).

29. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

French courts apply the doctrine of *renvoi*. However, since the implementation of the Succession Regulation, its use is limited to cases where the law designated by the Succession Regulation is that of an EU member state not bound by the Regulation (that is, Denmark or Ireland) or a third state. In practice, there is convergence in the conflict-of-laws rules so that the question of *renvoi* does not often arise.

INTESTACY

30. What different succession rules, if any, apply to the intestate?

The surviving spouse will continue to own co-owned property under the applicable matrimonial regime (see *Question 46*).

The intestate share of a spouse varies depending on the composition of the family:

- If there are children or descendants of the deceased:
 - if they are children or descendants of both the deceased and the surviving spouse: the spouse can choose between 1/4 of the property in full ownership or the totality in usufruct;
 - if they are children or descendants solely of the deceased: the spouse is entitled to 1/4 of the property in full ownership.
- If there are no children or descendants of the deceased:
 - if both parents of the deceased are still alive: the spouse is entitled to 1/4 of the property in full ownership;
 - if only one of the deceased's parents is still alive: the spouse is entitled to 3/4 of the property in full ownership;
 - if none of the deceased's parents is alive: the spouse is entitled to the entire property in full ownership except for assets that have been given or bequeathed to the deceased by the deceased's parents and grandparents, which are attributed in half to their brothers and sisters and their children.

In addition, in absence of descendants, whatever the deceased's will, the surviving spouse has a minimum reserved portion of 1/4 of the deceased's estate.

The heirs are classified in the following order:

- Children and their descendants.
- Parents, brothers, and sisters.
- Relatives in direct ascending line other than parents.
- Other family relatives.

The closest heirs in degree of kinship inherit and exclude the following category of heirs. Subject to the surviving spouse's share, the remaining estate is shared equally between the heirs of the highest category.

However, the rule of representation allows a descendant of an heir who has already died to receive their share of the estate.

31. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

Beneficiaries can challenge the result of the succession under the intestacy rules (notably in case of fraud or where they have been disadvantaged compared to other heirs). However, they cannot challenge the application of the intestacy rules on the ground of inadequacy of provision.

TRUSTS

32. Are trusts (or an alternative structure) recognised in your jurisdiction?

Civil/Common Law

Type of Trust and Taxation. French law provides for a trust equivalent, the *fiducie*. As with a trust, a settlor can transfer a part of their estate to a *fiducie*, which would be managed by a trustee (*fiduciaire*) for the benefit of the beneficiary. However, unlike trusts, the assets transferred are considered to be part of the trustee's estate and not of the *fiducie* itself.

Contracts establishing *fiducies* for the purpose of making a gift (*intention libérale*) are null and void. French *fiducies* therefore cannot be used to structure inheritance and donation schemes. In addition, the *fiducie* contract terminates on the death of the settlor.

Nevertheless, individuals can use French *fiducies* for asset management purposes during their lifetime (*fiducie gestion*). *Fiducies* can also be used for providing security rights for creditors (*fiducie sûreté*).

The following taxes apply to a *fiducie*:

- On creation: transfer duties and/or VAT.
- During its lifetime: income of the *fiducie* is usually taxable at the settlor level (personal or corporate income tax). The assets transferred are taken into account for the calculation of the settlor's French real estate wealth tax liability. Depending on the content and the activity of the *fiducie*, other taxes may also apply.

Residence of Trusts. French registered *fiducies* are subject to French civil and tax law, but since they are not taxable, they are not regarded as tax residents for double tax treaty purposes.

Tax Laws

Type of Trust and Taxation. Specific tax provisions apply to foreign trusts. All types of income generated by the assets of foreign trusts and distributed to a French tax resident are taxed at 30% (a flat tax including personal income tax and social contributions).

Inheritance and gift tax applies to the distribution of the assets of a foreign trust, subject to the territoriality rules (see *Question 7*). This tax can also apply on the death of the settlor even in the absence of any asset distribution.

Income received by a French tax resident for their work as trustee is subject to personal income tax at the general progressive rates.

Assets held in the trust should, in principle, be included in the taxable estate of the settlor for real estate wealth tax purposes.

However, those general tax rules may be modified depending on the exact nature of the trust, its deed provisions and the relevant foreign law.

Residence of Trusts. Foreign trusts are not treated as French tax residents.

33. Does your jurisdiction maintain a central register of trusts?

France has implemented registers for *fiducies* established in France as well as for foreign trusts. These registers are not public.

For foreign trusts, registration involves the disclosure to the tax authorities of certain information including the settlor, trustee and beneficiary, and a list of the trust assets and their value.

Event-based tax disclosures are also required if the:

- Trust holds any French assets or rights (whether real estate assets or otherwise).
- Settlor, trustee or at least one of the beneficiaries is a French tax resident.

Annual tax reporting is also compulsory. On failure to file, penalties can apply of up to EUR20,000. A specific levy can also apply at 1.5% on the net value of the undeclared French real estate assets unless they have been disclosed in an annual real estate wealth tax return.

34. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

France recognises the validity of foreign trusts provided that the foreign trust:

- Has been established in accordance with the laws of the country of establishment.
- Does not contravene the French public order (notably the forced heirship regime).

However, for tax purposes, certain foreign trusts are not regarded as trusts, including:

- Unit trusts. Such entities usually qualify as Undertakings for Collective Investment in Transferable Securities (UCITS).
- Certain types of trusts created by companies for their own benefit (for example, trusts created for employees' shareholding and participation schemes).

France is a signatory to the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention). However, this has not been ratified and therefore does not have effect in France.

35. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

If a trustee of a foreign trust becomes French tax resident, they become liable to disclosure requirements including:

- Event-based trust reporting (in the year of settling in France).
- Annual trust reporting.

In addition, depending on the type of trust and its assets, the trustee may become liable to other taxes (such as a specific levy on the trust, or, in some circumstances, gift and inheritance tax) as well as further disclosure requirements (such as reporting to avoid the payment of the annual 3% tax).

36. If your jurisdiction has its own trust law, does the law provide specifically for the creation of non-charitable purpose trusts? Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated? Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose Trusts

French law does not specifically allow for the creation of non-charitable purpose trusts. However, non-charitable foreign trusts may be effective in France, subject to some conditions (see *Question 34*).

Perpetuities and Accumulations

French law does not forbid foreign provisions as to perpetuities and accumulation in foreign trusts per se. However, depending on their drafting, these may interfere with public order provisions such as the forced heirship regime.

Subject to the territoriality rules set out in *Question 7* and *Question 32*, accumulation and perpetuities provisions may be disregarded for tax purposes, as inheritance and gift tax can still apply even in the absence of factual transfer of the foreign trust estate to a beneficiary.

Beneficiaries' Rights to Information

French law does not forbid the restriction of the beneficiaries' rights to information about the trust in the trust document.

37. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

French civil law offers limited protection for assets placed in trusts/*fiducies* by a spouse/partner on the dissolution of marriage/partnership. The judge may recognise the claims of the settlor's spouse/partner, depending on various factors, such as the existence and provisions of a marriage agreement, the type of goods transferred to the trust/*fiducie* and when this was performed.

If the spouse/partner is the beneficiary of a trust/*fiducie*, they will be protected if they have not yet received the benefit of the trust.

38. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

For French *fiducies*, creditors of the settlor cannot access the *fiducie's* assets unless it was set up in violation of the creditors' rights.

Creditors of the beneficiaries cannot access the *fiducie's* assets.

If the *fiducie* estate is insufficient to cover the liabilities arising from it, the creditors will have access to the settlor's estate to execute their right to repayment on the debtor's assets. However, the *fiducie* contract can limit the obligation to pay trust liabilities to the trust estate, although such a clause is only enforceable against creditors who have expressly accepted it.

Assets transferred to foreign trusts are in principle protected from creditors. However, this protection has limits, notably in case of fraud or if the provisions applicable to the trust contravene the French public order.

CHARITIES

39. Are charities recognised in your jurisdiction?

French law charitable organisations are contractual associations set up by two or more persons for a non-profit making purpose on a permanent basis. Charities are governed by the French law of contracts and specific legal provisions for charities (in particular, Law of 1 July 1901, as further amended). A charity may acquire legal personality through a registration process. This registration is required to receive tax benefits (see *Question 40* and *Question 42*).

French law recognises both charities with their head office in France and foreign charities carrying out their activities in France.

40. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Two or more persons, whether French or foreign, or individual or legal entities, can establish a charitable organisation through a contract subject to general French contract law under the French Civil Code. There is no choice as to legal structure. A charity can then acquire legal personality through a registration process. This registration is required to receive the tax benefits as a charity. The interests of the charity members must be convergent, and the purpose of the charity must be collective and distinct from those of each of its members. In principle, the purpose can be any lawful activity other than the "sharing of profits". However, the available tax benefits will depend on its status as either a "general interest" or "public utility" charity (see *Question 42*).

In principle, a charity's establishment is not subject to the prior review of the administrative or judicial authorities even if it appears to be invalid or has an unlawful object. However, an irregular declaration should prevent the charity's registration (and therefore the acquisition of legal personality). In addition, the judicial authorities can sanction any irregularity in the fulfilment of publicity formalities, such as irregular, untruthful or fraudulent declarations, by criminal fine. Such fines would be incurred by those responsible of the administration of the charity.

Founding members do not have specific rights except as provided by the bye-laws of the charity. The bye-laws can freely organise the relationships between the members, the management and the activities of the charity.

The charity contract need not be written unless registration is intended. However, in the absence of registration, the charity has no legal capacity.

Registration is with the competent *Préfecture* (*Grefe des associations*) and is published in the French *Official Journal of Associations and Corporate Foundations* (*Journal Officiel des Associations et Fondations d'Entreprise*). There is no need to register separately with the French tax authorities.

On this declaration, the *Préfecture* automatically registers the charity in the National Directory of Associations (*Registre National des Associations*) kept by the Ministry of the Interior.

Further formalities may be necessary if the charity:

- Employs salaried staff.
- Is liable to pay VAT or corporation tax.
- Wishes to receive subsidies from the state or local authorities.

41. What are the main regulatory authorities for charitable organisations? What are their powers of investigation/audit/sanctions?

There are no specific regulatory authorities for charitable organisations. Charities are subject to the same judicial, administrative and tax authorities as any other legal person.

During its lifetime, the charity is subject to the control of the:

- **Judicial authorities.** Like any other entity, a charity can be subject to civil or criminal sanctions. Among other things, civil liability can arise if a charity misuses public funds.
- **French tax authorities.** As charities can benefit from a favourable tax regime and provide tax allowances to the donors, the French tax authorities can audit the charity's compliance with the French tax rules (see *Question 42* to *44*).

42. What are the benefits for individuals when setting up charitable organisations?

Tax benefits are available for charities that qualify for either "general interest" or "public utility" status.

General Interest Status

To receive tax benefits as a general interest charity, charities must meet four cumulative criteria:

- The charity must be a legal entity (see *Question 40*) established in France or in member state of the EU or EEA that has concluded tax treaty with France containing a clause for assistance against tax fraud or evasion.
- The charity must not:
 - have a for-profit business activity;
 - be managed in self-interest; or
 - have an activity dedicated to a restricted circle of beneficiaries.
- The French tax authorities' guidelines have detailed criteria for each of these three conditions.
- The charity must pursue one of the listed activities and aims, including:
 - philanthropy;

- supporting education, science, society, humanitarian activities, sports, families, culture, artistic heritage or environmental protection; or
- the spreading of French culture, language and/or scientific knowledge.
- The charity must perform its activities in the EU or the EEA, or meet additional criteria. Non-French charities must pursue objectives and have similar characteristics as to both their form and purpose as entities established in France. Stricter conditions apply for activities exercised outside the EU/EEA.

General interest status provides two types of tax advantages:

- Exemptions from corporate income tax, VAT and business tax.
- The possibility for donors to deduct their gifts made to charities (see *Question 44*).

Public Utility Status

Public utility status is granted to charities through a decree by the Minister of Internal Affairs (*Ministère de l'Intérieur*) after advice of the *Conseil d'Etat*, the French administrative highest court.

Organisations with public utility status are subject to additional requirements, such as:

- Stricter controls over the use of the organisation's funds and the distribution of assets on dissolution.
- Three years of prior existence.
- A minimum number of members.
- Certain mandatory provisions in the bye-laws.

Charities established in foreign jurisdictions may be granted the same tax benefits provided they comply with these conditions.

Public utility status entitles the charity to the same benefits as general interest status, as well as additional tax benefits such as being able to receive bequest or donations through a notarial deed (which is necessary for the transfer of real estate).

43. What are the main disadvantages of setting up a charitable organisation?

To be eligible for a favourable tax regime, the charity must meet several conditions (see *Question 42*). Therefore, the setting up and the running of a charitable organisation should be carefully monitored by its members since the French tax authorities can scrutinise the compliance with these conditions. In that respect, French and foreign charities must apply for a ruling from the French tax authorities to secure their status.

44. What are the benefits to individual donors making donations to charitable organisations?

Donations to eligible charities (see *Question 42*) entitle the donor to a tax credit equal to 66% of the amount donated, up to a limit of 20% of the annual taxable income of the individual.

The share of the qualified donations over this threshold can be carried forward for the five following years.

French tax law provides for another tax credit equal to 75% of an amount donated to charities that provide people in poverty with free meals, help to find accommodation or medical care. This tax credit is capped at an annual amount of EUR552.

Tax credits can also be used to partially pay French real estate wealth tax by up to 75% of the gift made, up to a cap of EUR50,000. However, this tax credit is limited to donations made

to certain types of charities (mostly education and research organisations with general interest status as well as public utility foundations).

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

45. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

French law recognises co-ownership. Co-ownership can result from a contract or operation of law (through marriage, divorce or succession). Co-owners cannot be forced to stay in a co-ownership. Co-owners have liability for the debts of the co-owned assets (in proportion to their share). On the death of a co-owner, their share is divided between their heirs, who become co-owners in place of the deceased.

Co-owners are subject to personal income tax on their share of income generated by the co-owned assets. The value of their share is included in their real estate wealth tax basis.

Familial Relationships

46. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohobitees/civil partners in real estate or other assets protected by law?

The following matrimonial regimes exist in France:

- **Limited community.** This is the default regime for a couple married in France in the absence of marriage contract. Assets owned by spouses before the marriage remain their respective assets, and assets gained during marriage belong to the spouses under common ownership. On the first death, the assets in common ownership are divided into two, and the deceased's share passes under their succession.
- **Separation of assets.** Spouses can choose in a marriage contract to hold their own assets separately from the other. On the first death, all the assets of the deceased will pass under their succession.
- **Universal community.** Spouses can choose in a marriage contract that the assets owned by the spouses on the day of marriage and any assets that they may subsequently acquire are brought into common ownership. On the first death, all the assets are transferred to the surviving spouse.

The rights of cohobitees in assets are not protected by French law. The rights of civil partners with respect to assets depend on their choice of matrimonial regime (limited community, co-ownership, separation of assets). Civil partners do not have specific rights on the inheritance of their partner as to a default community of property or forced heirship.

47. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex couples have the same rights as heterosexual couples. No difference is made with respect to tax and succession. Both marriage and civil partnership are open to same-sex and heterosexual couples.

48. How are the following terms defined in law: married, divorced, adopted legitimate, civil partnership?

French law does not define the following terms but provides for their effects.

Married

Two persons can be united through the institution of marriage. Marriage has various legal effects. A marital contract can be signed between the spouses to organise the effects on their property (see *Question 46*).

Divorced

Divorced is used to describe a person whose former marriage was terminated. The procedure for divorce is made before a judge or a notary. The effects (rights and obligations) of the marriage no longer apply to the divorced. However, the divorced must comply with the provisions of the divorce judgment (or contract received by the notary).

Adopted

French law distinguishes between:

- Full adoption (where there is no continuing legal relation between the adopted and their biological family).
- Simple adoption (where legal relations exist between the adopted and both their biological and adoptive family).

In a full adoption, adopted children have the same rights as biological children. However, for simple adoption, adopted children may have limited rights, including as to inheritance.

Legitimate

French law does not distinguish between legitimate and illegitimate children.

Civil Partnership

Two persons can conclude a civil partnership or "Pact of Civil Solidarity" (PACS). Compared to marriage, civil partnership has limited legal effect in relation to filiation, inheritance or the couple's asset management.

Minority

49. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

Minors (below 18 years old or 16 if emancipated) can inherit and are treated equally with other heirs. Their legal representatives act for them in the estate settlement and may require the family judge's approval in the procedure.

Minors can own inherited assets. However, they cannot manage the estate themselves and their legal representative must deal with it until their majority. In general, both parents have the authority to do so. If they cannot, a judge can appoint a legal guardian or a family council to take care of the minor's interests. The family judge's approval may be necessary for most important acts (such as a disposal of part of the minor's estate).

CAPACITY AND POWER OF ATTORNEY

50. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

People who are not able to defend their interests can benefit from different protective measures, depending on their degree of incapacity. A judge decides on such measures and would appoint a legal guardian and define the extent of their powers.

French jurisdictions recognise foreign powers of attorney within the limits of the French public order.

PROPOSALS FOR REFORM

51. Are there any proposals to reform private client law in your jurisdiction?

No major reform is currently planned or discussed with respect to private client law.

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