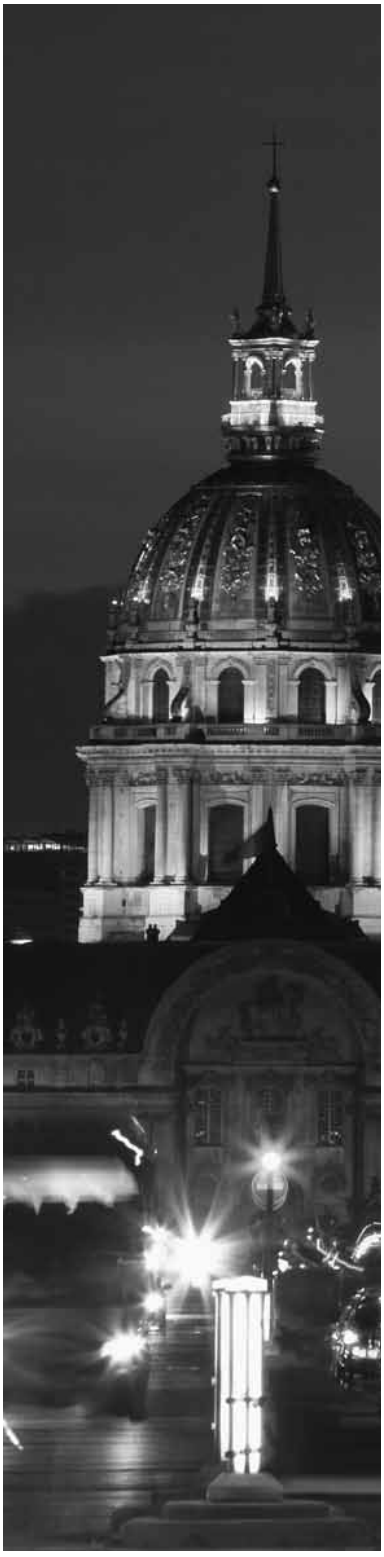
France



1. Types of tax

France taxes all free transfers regardless of whether there is a transfer of assets resulting from a death or a free transfer *inter vivos*.

Historically, gifts were considered early transfers from a future succession. Consequently:

- Gifts are subject to the same tax rules as estates except for certain rules that are specific to gift tax.
- Successions in general take into account gifts between the deceased and the heirs (back tax rule) (see Section 1.1 below).

The inheritance and gift taxes are national and levied by the French state.

Additionally, France taxes:

- Real estate owned (property tax or taxe foncière) or occupied (residence tax or taxe d'habitation) in France.
- French real estate owned anonymously (3% tax on real estate or taxe de 3%).
- Wealth (French wealth tax or impôt de solidarité sur la fortune).

France also taxes income and capital gains derived from properties located in France through personal income tax.

1.1 Inheritance tax

Inheritance taxes are due for all transfers at the time of death regardless of whether they result from a legal succession, a will or a gift due to death, such as a gift between spouses.

Subject to territoriality rules, tax must be paid in France when the deceased was a French resident, the heirs are French residents or when the assets are located in France.

Subject to the aforementioned territoriality rules and specific rules exempting certain assets, the taxable estate is, in principle, determined in accordance with French civil law rules (see Section 10).

The debts of the deceased, substantiated as of the date of death, are then deducted from the estate assets.

Inheritance tax is calculated on the net portion passing to each heir or legatee based on the devolution by law rules and any testamentary provisions of the deceased.

The net share received by each heir will be:

- Less a tax allowance whose amount depends on the kinship of the beneficiary with the deceased (see Section 3.1).
- Subject to a rate based on a scale depending on the kinship of the beneficiary with the deceased (see Section 3.2).

Before applying the allowance, any previous gifts made by the deceased to the same beneficiary should be added to the net share of the beneficiary if the gifts were given less than 10 years prior to the death (back tax rule).

The back tax rule concerns all forms of gifts (gifts by notarized act, hand-to-hand gifts, *inter vivos* distribution, etc.). According to this rule, estates preceded by gifts made less than 10 years prior are considered a single conveyance.

The back tax rule has the effect of allowing:

- The application of allowances (see Section 3), but only after deduction of those from which the beneficiary has already benefited for the previous gifts concerned.
- The application of the various bands of the rate (see Section 3) for the portion not affected by the previous gifts concerned.
- The application of tax reductions, less any reductions from which the beneficiary has already benefited for the previous gifts concerned.

Conversely, with gifts given more than 10 years prior to death, the inheritance tax is calculated by taking into account the full allowances, the tax rate starting with the lowest bands and any tax reductions in their entirety.

1.2. Gift tax

A tax is due in France on a gift when the donor or the donee is a French resident or when the gift concerned is an asset located in France.

Gift tax is, in principle, due from the donee. However, it may be paid by the donor without such payment being considered a supplemental gift.

In principle, gifts follow the same tax rules as estates subject to certain differences.

These pertain to:

- Rules of territoriality
- Exempt gifts
- Allowances
- Rates
- Tax reductions
- The earlier gifts rule, when at least 10 years separate two successive gifts between the same people

Particularities concerning hand-to-hand gifts

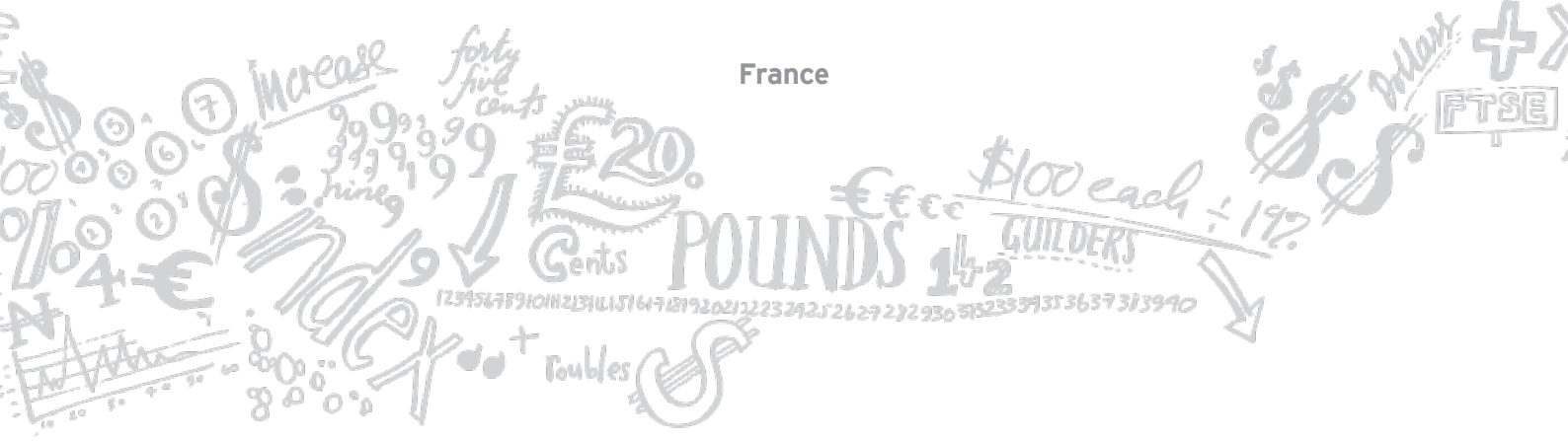
In France, hand-to-hand gifts (don manuel) are not taxable if they are not declared.

However, undeclared hand-to-hand gifts become taxable:

- When spontaneously disclosed to the tax authorities either in response to a request by the latter or during a tax audit.
- In relation to a later gift made by notarized act between the same persons or in relation to the death of the donor if the donor is one of the presumptive heirs.

Hand-to-hand gifts must be declared and registered within one month of disclosure; the tax is computed on the value of the donated asset on the day of disclosure. Payment is made at the time of declaration.

The beneficiary of a hand-to-hand gift whose value exceeds €15,000 can spontaneously opt for the disclosure of the gift with the postponement of the declaration and payment of the corresponding tax before the end of the first month following the donor's death. The tax is computed on the value of the hand-to-hand gift as of the day of the declaration or as of the day of the donation, should the second amount be higher than the first one.



The triggering event for gift tax occurs on the day of disclosure. Therefore, the statute of limitations for hand-to-hand gifts does not start as of the date of the gift but as of the date of disclosure of the gift. Consequently, a tax audit is not limited in time for undisclosed gifts.

1.3 Real estate transfer tax

The transfer of real estate in return for payment, as well as the transfer of real estate rights in return for payment is, in principle, subject to a real estate registration tax (taxe de publicité foncière) at a rate of 5.09%.

This tax is computed at the fair market value of the real estate or real estate rights transferred. The tax is due by the purchaser.

1.4 Transfer duty

All transfers of ownership of real estate or real estate rights are subject to a registration duty at the rate of 0.70% for the registration of the transfer at the mortgage office (bureau des hypothèques). This duty is calculated on the market value of the property or right transferred and is due by the new owner.

1.5 Wealth tax

French wealth tax has been substantially revised by Law No. 2011-900 as of 29 July 2011.

Please note that only the rules applicable beginning 1 January 2012, are presented below.

Subject to the application of international tax treaties, the following are liable to French wealth tax:

- French residents whose worldwide assets are valued at or above €1,300,000.
- Non-French residents whose assets located in France (except financial investments in France, which are exempt) are valued at or above €1,300,000.

The taxable worth for a year is assessed on 1 January of each year. It is the worth after deduction of debt owned by the taxpayers as well as debts on which the taxpayer holds the usufruct. It includes all assets owned by the taxpayer, as well as all assets on which the taxpayer holds the usufruct (except fully or partially exempted assets).

Deductible debts are debts of any kind that exist on 1 January and for which the taxpayer is personally liable. They include:

- Due taxes
- Loans
- Bank overdrafts

The assets and liabilities are reported by the taxpayer who is, in principle, responsible for calculating the tax and sending the payment of the tax with the declaration.

1.6 Property tax (taxe foncière)

Property tax is due by any owner of real estate or land located in France on 1 January of the year of taxation.

The tax is collected for the benefit of local governments (municipalities, departments and regions), which vote on the tax rate each year depending on their needs. Consequently, the amount of tax is frequently very different from one municipality to another for a similar property.

The tax base is equal to half of the cadastral rental value set by the tax administration and not to the actual rental value (which is higher). It is possible to contest the rental value attributed to a property.

Therefore, property tax does not require the filing of a declaration by the taxpayer who, at the end of the calendar year, receives a tax assessment notice stating the tax due and the basis of the calculation made by the tax administration.

1.7 Residence tax (taxe d'habitation)

Residence tax is payable by any occupier of a residence in France. This tax is levied on the person who occupies the residence on 1 January of a given year and is payable toward the end of the year (15 November). The tax authorities will request the payment from the person who occupies the residence on 1 January even if that person has since moved from the residence.

This tax is levied for the benefit of the local authorities, who vote on the tax rate each year according to their needs.

Similar to property tax, the residence tax base is the cadastral rental value. The taxpayer can challenge the value used if he or she believes it is too high.

Residence tax does not require the filing of a declaration by the taxpayer who, at the end of the year, receives a tax notice with the computations performed by the French tax authorities.

The 3% tax on the market value of real estate

French law provides for an anti-evasion tax in the form of a 3% tax computed on the market value of the real estate concerned. The purpose of the 3% tax is to prevent an individual, whether resident or non-resident, from evading wealth tax, capital gains tax or transfer tax on property (not assigned to any professional activity) in France by interposing one or more French or foreign legal entities.

The tax applies to all legal entities: corporations, trusts and foundations, regardless of the number of interposed entities.

The tax is due by the entity that is closest to the property in the shareholding chain and that cannot benefit from an exemption from this tax.

Exempted from this tax are legal entities whose real estate assets in France, not assigned to their own professional activity or to the activity of their subsidiaries, represent less than 50% of their French assets, held directly or indirectly through interposed entities.

Several other cases of exemption are provided for by French law (international organizations, governments, pension funds, listed companies, etc.).

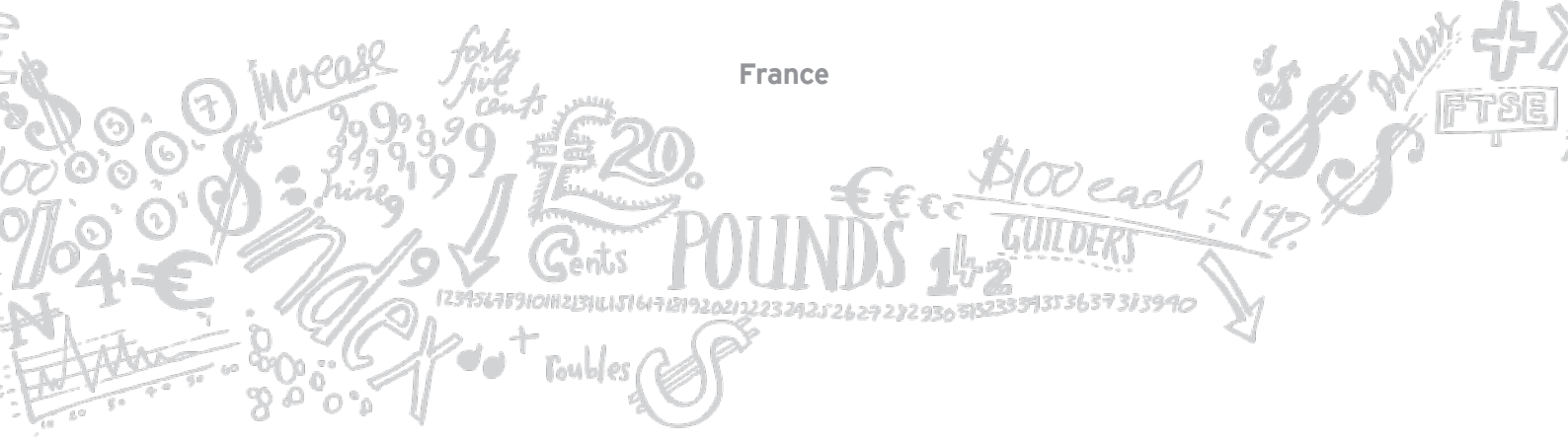
In the case of the non-professional management of real property for an individual, complete exemption from the 3% tax is subject to two conditions:

- The interposed legal entities must have their main office in France, in the European Union or in a state that has concluded a tax treaty with France providing for administrative assistance or including a non-discrimination clause.
- All entities in the same shareholding chain annually disclose or undertake to disclose to the tax authorities the real property owned on 1 January, as well as the identity and address of their shareholders.

The annual return must be filed no later than 15 May of each year. The disclosure commitment must be made within two months following the acquisition of the real estate.

Therefore, a resident or a non-resident cannot anonymously hold real estate in France unless he or she pays this tax each year.

This 3% tax is calculated on the market value of properties held on 1 January without it being possible to deduct the debt incurred to acquire these properties.



2. Who is liable?

From a French tax law point of view, there is no difference between domicile and residence; both terms cover the same concept.

2.1 Liability and territoriality of French inheritance and gift taxes

Inheritance and gift taxes follow the same territoriality rules.

The territorial field of application of inheritance and gift taxes is extremely broad, as it depends on the residency of the deceased (donor), the location of the assets and the residency of the beneficiary (heir, legatee, donee). These rules apply subject to any international tax treaty rules that may override them (Article 750 ter, General Tax Code (CGI)).

The rules governing the determination of the residency of the deceased, donor or beneficiary are those applicable to income tax (Article 4B, CGI) subject to any international tax treaties that may override them.

Rules governing the residency of the deceased (donor) and the beneficiary (donee)

People meeting the criteria below are considered as domiciled in France for tax purposes if:

- Their home or primary residence is located in France.
- They are carrying out a non-incidental professional activity in France.
- The center of their economic interests is in France.

French territoriality rules applicable to inheritance and gift taxes

When the deceased or the donor is domiciled in France, all movable and immovable properties located in France and outside France transferred free of charge are subject to tax in France.

When the deceased or the donor is domiciled outside France, only the movable and immovable assets located in France are subject to tax in France. The following are considered located in France:

- Tangible assets
- Intangible assets, such as shares in French companies, receivables from a French debtor, patents and trademarks assigned or exploited in France, and shares in foreign companies for up to the value of real estate and real estate rights owned in France compared to total worldwide assets when the value of French real estate and real estate rights represents more than 50% of the corporate assets (real estate and real estate rights or other assets)

When the deceased or the donor is domiciled outside France and the beneficiary has been domiciled in France for at least 6 years during the last 10 years prior to the death or donation, all movable and immovable property located in France or outside France is subject to tax in France. If the beneficiary does not meet the aforementioned condition regarding domiciliation for tax purposes, the inheritance or gift is taxable in the conditions described in the previous paragraph.

In these three cases, tax paid outside France on assets located outside France is deducted from the tax due in France (Article 784A, CGI).

Impact of international tax treaties

France has signed more than 30 treaties relative to inheritance tax and 8 treaties relative to gift tax, which significantly override the rules presented below.

Most of the treaties follow these rules:

- When the donor or the deceased is domiciled in France, all movable property located in and outside France and only immovable property located in France transferred free of charge are subject to tax in France.

- When the donor or the deceased is domiciled outside France, only the movable and immovable property located in France is subject to tax in France.
- French tax due by a beneficiary who is a French resident and who has also received assets outside France, but not taxable in France by operation of the treaty, must take into account non-French assets to calculate the tax rate applicable to the French assets received by such resident (the effective rate rule).
- If, by application of the treaty, tax in France is due for assets located outside France, the foreign tax is deducted, under certain conditions, from the tax due in France (Article 784A, CGI).

Impact of the rules of territoriality on hand-to-hand gifts

Based on the territoriality rules described above, assets outside France escape the French conveyance fees only in the event that both the deceased or the donor and the beneficiary are not French residents at the time of the transfer.

Since the event generating the hand-to-hand gift is either its disclosure or an inheritance, it is prudent for a foreigner settling in France to disclose it upon arrival. He or she will then be exempt. Conversely, if the death of the donor occurs more than 10 years after the beneficiary has settled in France, the gift will then be taxed in France even if the estate is not subject to French law for back taxes.

2.2 Liability and territoriality of wealth tax

Wealth tax is due by:

- French residents whose worldwide assets are valued at or above €1,300,000.
- Non-French residents whose assets located in France (except financial investments in France, which are exempt) are valued at or above €1,300,000.

The rules governing the determination of the residency of the taxpayer are those applicable to income tax (Article 4B, CGI) subject to any international tax treaties that override them.

Non-French residents who settle in France may be temporarily exempt from wealth tax for the first five years after their establishment in France on assets that they possess outside France, provided that:

- They have been established in France since 6 August 2008.
- They have not been domiciled in France during the last five calendar years preceding the year of their establishment.

France has concluded more than 50 tax treaties regarding wealth tax.

Most of these tax treaties follow the same principles:

- Real estate is taxed in its state of location and in the state of residency of the taxpayer.
- Shares in a predominantly real estate company (that is, a company whose assets comprise a majority of real estate) when such company owns real estate in France are deemed to be real estate.
- Assets other than real estate are taxed only in the state of residency of the taxpayer.
- Double taxation is usually avoided through the tax exemption method (with effective tax rate) or the tax credit method.

3. Rates

3.1 Allowances applicable to both gifts and inheritances

These allowances apply to the net share of each heir or on the gift before the application of the rate.

The main allowances are the following:

- €159,325 for direct line inheritances and gifts.

- €15,932 for inheritances between siblings.
- €159,325 for inheritances and gifts to disabled people (this allowance is added to the allowance to which such people are entitled within the family).

The principal allowances applicable to gifts only, in addition to those listed above, are as follows:

- €80,724 for gifts between spouses.
- €31,865 per share for all gifts to grandchildren.
- €5,310 per share for all gifts to great-grandchildren.

The back tax rule for gifts given less than 10 years ago is applicable. Therefore, this allowance is applicable only once every 10 years.

Rates

The rates and the allowance and reduction amounts given are effective as of 1 January 2011.

Rates applicable to both gifts and inheritances

Direct line inheritances and gifts, collateral line inheritances and gifts, and inheritances and gifts among non-relatives are subject to the same rates.

Transfer in favor of ascendants and descendants:

Value transferred	Rate (%)
Up to €8,072	5%
From €8,072–€12,109	10%
From €12,109–€15,932	15%
From €15,932–€552,324	20%
From €552,324–€902,838	30%
From €902,838–€1,805,677	40%
Above €1,805,677	45%

Transfer between siblings:

Value transferred	Rate (%)
Up to €24,430	35%
Above €24,430	45%

Other cases	Rate (%)
Transfer between blood relatives up to the fourth degree (whatever the amount)	55%
Transfer between remote blood relatives (beyond the fourth degree) and unrelated parties (whatever the amount)	60%

Rates specific to gifts

Only inheritances between spouses are exempt. A special rate exists for gifts between spouses.

Gift between spouses

Value transferred	Rate (%)
Up to €8,072	5%
From €8,072–€12,109	10%
From €12,109–€15,932	15%
From €15,932–€552,324	20%
From €552,324–€902,838	30%
From €902,838–€1,805,677	40%
Above €1,805,677	45%

Tax reductions

Once the tax has been calculated, various tax reductions may apply.

If the beneficiary has, at the time of the transfer or at the time of the gift, three or more children, the beneficiary is entitled to a reduction on the tax due up to:

- €610 per child after the second child (transfer between blood relatives).
- €305 per child after the second child (other transfers).

Finally, shares in companies that benefit from an exemption of three-quarters of their value under a conservation covenant (see Section 4.1) benefit from a 50% tax reduction.

3.2 Wealth tax scale

The scale includes two rates (from 1 January 2012):

- A single rate of 0.25% applicable to assets whose net value is equal to or more than €1,300,000 but less than €3,000,000.
- A single rate of 0.50% applicable to assets whose net value is equal to or less than €3,000,000.

In order to avoid the threshold effects, this scale provides for tax relief that reduces the tax due to:

- €1,500 for net assets worth €1,300,000.
- €7,500 for net assets worth €3,000,000.

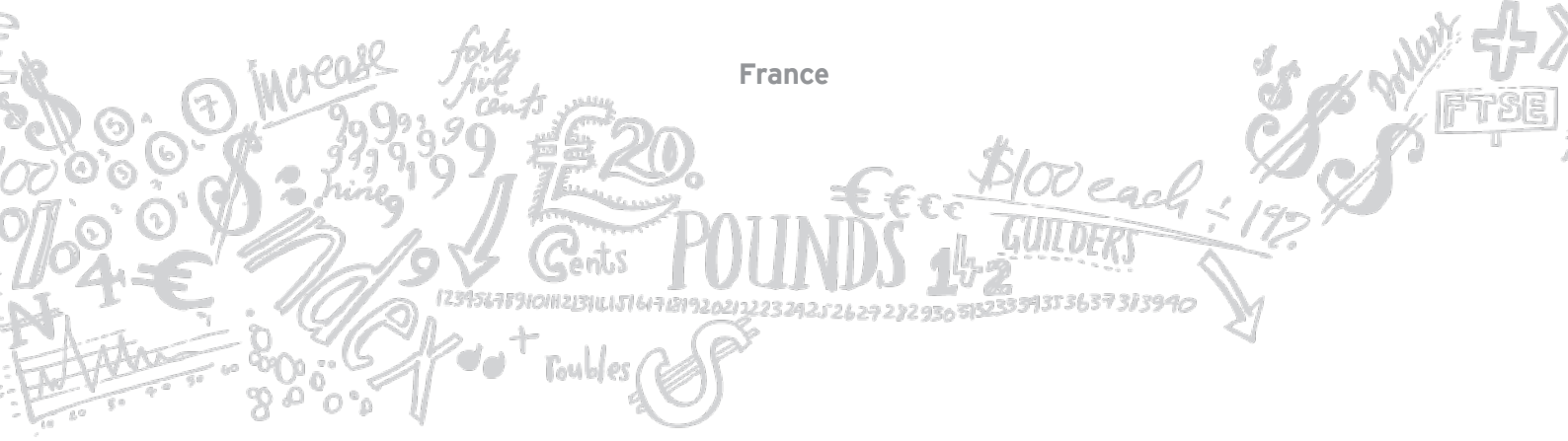
4. Exemptions

4.1 Exemptions applicable to both inheritance and gift taxes

Exemptions may affect assets or persons.

The following are exempt from inheritance and gift taxes:

1. Units or shares in companies that, prior to being part of the estate or the gift, were part of an official collective lock-up arrangement signed by the shareholders and their heirs (Dutreil pact) for up to three-quarters of their value (Article 787B, CGI).



2. Sole proprietorships that were part of a lock-up arrangement by the heirs made in the estate declaration or in the gift act (Article 787C, CGI) for up to three-quarters of their value.

3. Woods and forests, as well as forest group units, that are part of a sustainable management commitment for up to three-quarters of their value (Article 793, CGI).

4. Rural assets under long-term leases or transferable leases, as well as shares in agricultural land groups under certain conditions, for up to three-quarters of their value (Article 793, CGI).

5. Units in rural land groups under certain conditions (Article 848 bis, CGI).

6. Buildings classified as historical or related monuments and shares in real estate companies owning such buildings under certain conditions (Article 795A, CGI).

7. Gifts and bequests to the state, public authorities, scientific and educational public institutions, certain associations or foundations recognized to be of public use acting in a charitable context, charitable organizations, environmental protection institutions, animal protection, medical or scientific research.

Specific exemptions from inheritance tax

An inheritance received by the surviving spouse is fully exempt from inheritance tax.

There is also full exemption from inheritance tax between siblings under certain conditions related to disability or age, as well as the shared residence of the deceased with the beneficiary or beneficiaries.

Specific exemptions from gift tax

Certain gifts in-kind to a child, grandchild or great-grandchild are, under certain conditions, exempt from gift tax for up to €31,865 (gifts made in 2011).

4.2 Exemptions from wealth tax

The law exempts from wealth tax certain property or rights, including:

1. Antiques, works of art or collectors' items.

2. Literary and artistic property rights held by the author (but no exemption for the rights held by the heirs).

3. Woodlands and forests, for three-quarters of their value, provided that they are operated according to specific standards.

4. Professional property needed for the exercise of a profession.

5. Shares in joint-stock companies with a business activity held by shareholder-managers under certain conditions related to the remunerated functions performed in the company and to the extent of the stake held (at least one-quarter of the share capital) making it possible to assimilate the shares to professional property.

6. Shares in companies with a business activity that may or may not be held by shareholder-managers for up to three-quarters of their value and that are the subject of an agreement for a continuous holding period of at least eight years (Pacte Jacob).

These exemptions apply to both French property and property outside France.

French law also exempts financial investments of non-residents. However, the following do not qualify as financial investments:

- Investment securities (titres de participations) (securities representing more than 10% of the capital of a company).
- Shares in companies directly or indirectly holding real estate in France.

French law also temporarily exempts (for five years) all assets located outside France owned by a taxpayer who moves to France and becomes a French resident (see Section 2.2).

5. Filing procedure

5.1 Inheritance tax

All the beneficiaries of an estate, heirs and legatees, are required to sign an estate declaration even if no tax is due for reasons related to territoriality rules.

The estate declaration may be drafted by one of the heirs on behalf of all heirs. It must, in addition, list all the assets in the estate.

The estate declaration (Form No. 2705) must be filed within six months of the death, if it occurred in France, with the tax center of the domicile of the deceased.

If the deceased died while abroad, it must be filed within one year of the death with the Non-Resident Tax Center.

Filing a declaration is mandatory even if no tax is due. It must indicate the testamentary provisions made by the deceased, all the gifts made by the deceased regardless of how long ago and the description and estimate of all the assets that are part of the estate (including exempt assets).

In principle, inheritance tax must be paid in cash at the time of filing the declaration. However, under certain conditions, payment may be deferred or made in installments.

5.2. Gift tax

A gift *inter vivos* is in principle a notarized act that the notary must file with his or her tax center within one month from the day of the signature of the act.

The tax is paid into the hands of the notary who transfers it to his or her tax center.

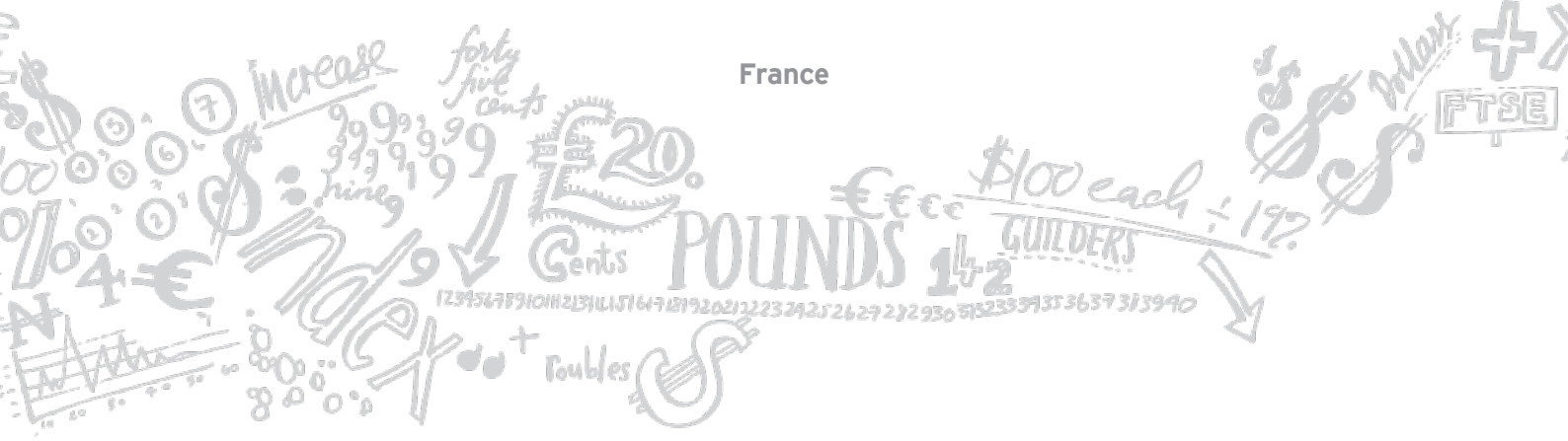
Hand-to-hand gifts that are not reported at the time of the gift but are subsequently disclosed must be reported using Form No. 2735 within a month of this disclosure to the donee's tax center if the latter is a resident of France or to the Non-Resident Tax Center otherwise.

Hand-to-hand gifts exceeding €15,000 may be declared one month following the donor's death (see Section 1.2).

5.3. Wealth tax

As of 1 January 2012, taxpayers subject to wealth tax whose assets are worth between €1,300,000 and €3,000,000 must indicate each year the amount of the net taxable value of their assets in addition to their taxable income on Form No. 2042, commonly used for their income tax; the tax will be paid on receipt of a tax assessment notice.

However, taxpayers whose assets are worth more than €3,000,000 must file an annual wealth tax return (Form No. 2725) each year, no later than 15 June, specifying the taxable assets and providing the documentary evidence needed, along with the payment of the amount of tax due.



5.4. Disclosure of trusts

As of 1 January 2012, a trustee has the obligation to declare the constitution, modification or extinction of a trust when:

- The settler or the beneficiaries are French residents during the year of the declaration.
- An asset placed in the trust is located in France if neither the settler nor any beneficiary is a French resident.

This declaration must be made on 15 June of each year. It must describe the terms of the deed of trust and list the assets placed in the trust and their fair market value at 1 January of the year of declaration.

Failure to declare a trust may result in a fine amounting to 5% of the value of the assets placed in the trust, with a minimum fine of €10,000.

6. Assessment of tax

6.1. Inheritance tax

Inheritance tax is calculated on the value of the assets transferred and taxable, which are in principle appraised at their actual market value as of the day of death (economic value of the asset based on its particularities, without taking into account any conventional value).

However, certain assets are subject to specific legal rules of appraisal, including the following:

- The primary residence of the deceased is subject to a 20% deduction from the market value.
- Furnishings are appraised at 5% of the estate assets, except when an inventory is prepared by a civil law notary.
- The listed marketable securities are appraised at the price as of the date of death or based on the average of the last 30 prices prior to the death.
- Life tenancy and bare ownership transferred through the estate have the value set by a scale established by law (Article 669 of the CGI).
  - Lifetime usufruct: regarding assets of which the bare ownership or usufruct is transferred, the value varies with the age of the usufructuary as shown in the table below:

Age of the usufructuary	Value of the usufruct	Bare ownership value
Up to 20	90%	10%
From 21–30	80%	20%
From 31–40	70%	30%
From 41–50	60%	40%
From 51–60	50%	50%
From 61–70	40%	60%
From 71–80	30%	70%
From 81–90	20%	80%
Over 91	15%	90%

When the usufruct is settled with a fixed term, it is estimated at 23% of bare ownership for each 10-year period, or part thereof, of the usufruct, without regard to the age of the usufructuary.

The use of the fixed-term usufruct cannot give a usufruct value exceeding that of the lifetime usufruct.

6.2. Gift tax

In principle, gifts follow the same rules as estates, but the 20% deduction for the primary residence, the 5% flat fee for furniture and the listed marketable securities based on the average of the last 30 prices are not applicable.

6.3. Wealth tax

The assets must be valued at their market value on 1 January of the year of taxation under the same rules as those relating to inheritance tax described above. The taxpayer's principal residence, however, benefits from a 30% deduction from its market value instead of 20%.

Property or rights that are subject to the division of ownership rights (usufruct or right of use) must be declared for their value under unrestricted ownership.

The valuation of the shares of a company whose assets are mainly French real estate (whether owned directly or indirectly) must be performed according to specific rules.

The valuation is based on the value of the assets as of the day of the valuation, minus current liabilities, but excluding any liabilities represented by debts held, directly or indirectly, through interposed companies by a non-resident shareholder of the company.

7. Trusts and fiducie

7.1 Trusts

Trusts are institutions that do not exist under French law. However, French jurisprudence recognizes the validity of trusts set up abroad and recognizes the effects that those trusts may produce in France, provided that:

- They respect the laws in effect in the country in which they were created.
- They do not infringe upon the mandatory rules of French law (in particular those relating to the reserved portions of a deceased person's estate).

Thus, a trust established abroad seeking to circumvent the mandatory rules under French law protecting the heirs statutorily entitled to a reserved portion of the estate in France may be considered null and void in France or as having limited effect.

Furthermore, the greatest uncertainty exists regarding the possibility of placing French assets in a trust. It is practically certain that placing French immovable property in a trust is not possible. Conversely, the validity of a trust relative to French movable property is more controversial. Case law has indeed approved a testamentary trust relative to an estate, including French movable property, that is governed by the law of the deceased's domicile outside France.

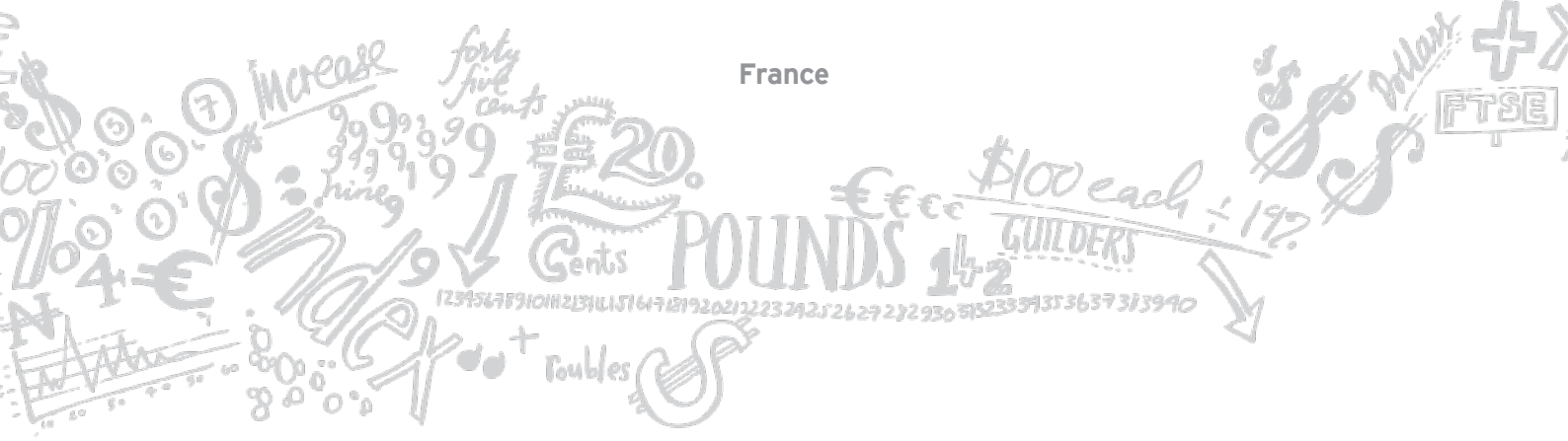
The answers provided by French jurisprudence in civil matters to the various situations involving trusts are incomplete.

However, from a French tax law point of view, Law No. 2011-900 of 29 July 2011, establishes a treatment obviously intended to fight against any possibility of tax evasion.

These provisions do not reflect the various distinctive characteristics that may affect trusts (revocable or irrevocable trusts, discretionary or not). They define a single tax regime by denying the effects of foreign law related to any particular form of trust.

The purpose of these provisions is to:

- Subject the assets owned by the trust to the duty on transfers without valuable consideration (droit de mutation à titre gratuit) as if the trust did not exist, upon the death of the initial settler and upon the death of the successive beneficiaries when the assets are kept by the trust (the successive beneficiaries are then treated as the initial settler) according to territoriality rules similar to those relating to inheritance tax (see Section 2.1.).



- Subject the assets owned by the trust to wealth tax as if the trust did not exist, according to territoriality rules similar to those relating to wealth tax (see section 2.2.).
- Create new declarative requirements for disclosure of the trusts under the responsibility of the trustees.

Taxation of transfers made by means of trusts

The rules described below apply to gifts and deaths occurring as of 30 July 2011.

Duty on transfers without valuable consideration is due:

- On the entirety of the assets of the trust, regardless of their location, when the settler is a French resident or when the beneficiary(ies) has (have) been domiciled in France for at least 6 years during the last 10 years, at the time of the transfer.
- Only on the assets of the trust located in France, if neither the settler nor the beneficiaries (as defined above) are French residents.

The properties or rights that come under the territoriality rules described above are subject to different taxation rules depending on whether the transfer can or cannot be classified as a gift or an inheritance:

- Should such classification be possible, the transfer of properties or rights is subject to the ordinary law taxation rules on inheritance and gifts, according to the relationship existing between the settler and the beneficiaries.
- Should such classification not be possible, the transfer of properties or rights, whether maintained in the trust or distributed to the beneficiaries outside the context of a succession, is taxable under the specific rule according to the case at hand:
  - If, at the time of the death, the share due to a beneficiary is determined, this share will be subject to inheritance tax at a rate according to the relationship existing between the settler and the beneficiary.
  - If, at the time of the death, a share is allocated globally to the settler's descendants, that share will be subject to inheritance tax at the rate of 45%.
  - If, at the time of the death, a share is neither globally allocated nor attributed to a determined beneficiary, that share is subject to inheritance tax at the rate of 60%.

It should be noted that a transfer is always taxed at 60%:

- When the trustee is established in a tax haven.
- When the trust was established after 11 May 2011, by a settler who was a French resident at the time of the constitution of the trust.

Wealth tax on the assets of a trust

Subject to the application of international tax treaties, the settler (or after his or her death, the beneficiaries treated as the initial settler) is subject to net wealth tax on:

- The assets placed in the trust, regardless of the location of such assets, if the settler is a French resident.
- The assets placed in the trust located in France (except for financial investments) if the settler is not a French resident.

In the event of non-disclosure of assets placed in a trust for the purposes of wealth tax, a new tax has been created at the rate of 0.5% in order to replace wealth tax as a penalty for such non-disclosure (applicable as of 1 January 2012):

- On assets located in France or outside France if the settler and the beneficiaries are French residents.
- Only on the assets located in France (except for financial investments) if the settler and the beneficiaries are not French residents.

This 0.5% tax would not be due on assets:

- Included in the settler's wealth tax base.
- Officially disclosed but not liable to wealth tax.

Those liable for the 0.5% tax are the settler and the beneficiaries of the trust jointly. However, this 0.5% tax must be computed and paid by the trustee by means of a declaration to be filed on 15 June each year.

7.2 Fiducie

In 2007, French law created a new institution called a "fiducie," governed by articles 2011 to 2031 of the French Civil Code.

In some ways, the Fiducie resembles a trust. Indeed, it allows a settler to transfer property and rights to a "fiduciaire" (trustee) who will act for the benefit of a beneficiary.

The Fiducie may be useful for the management of the assets of minor orphans or legally disqualified persons.

However, contrary to a trust, the Fiducie cannot, according to the law (Article 2013 of the French Civil Code), be used for the purpose of donation at the risk of it being rendered null and void.

For the purposes of this guide, the Fiducie is therefore of little interest and its tax regime will not be further developed here.

8. Grants

With regard to estate taxes, there are no specific rules in France on grants.

9. Life insurance

Money paid by an insurance company under a life insurance policy held by the deceased and whose beneficiary is a third party is theoretically not subject to the rules governing successions. Consequently, this method, with its related tax advantages, is popular in France for carrying out asset transfers that the application of civil law rules (affecting the reserved portion) or tax rules (cost) could prevent.

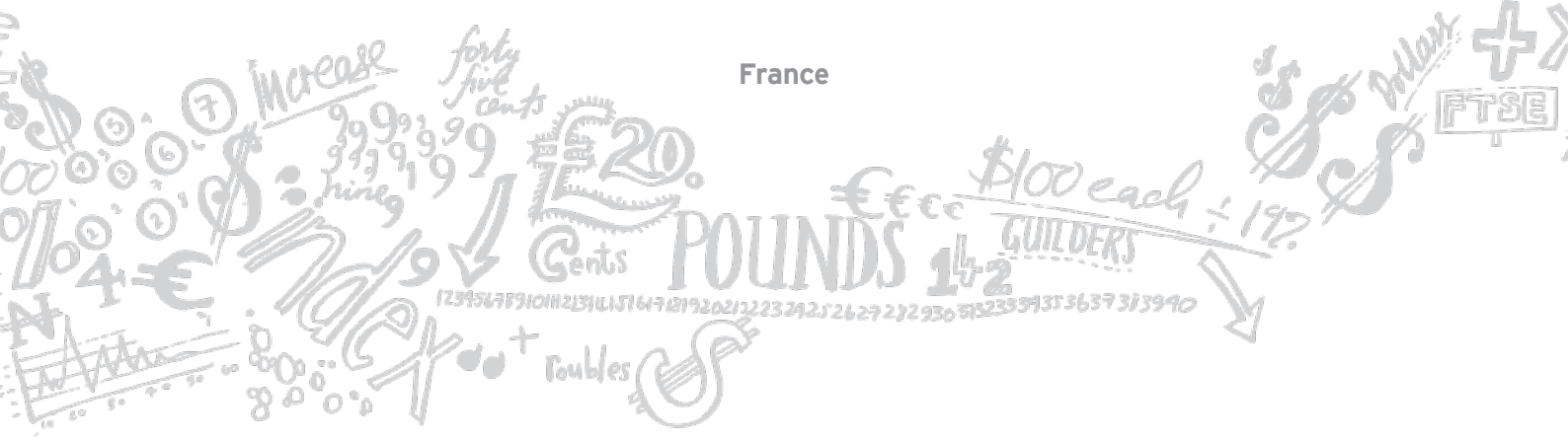
Under civil law, the situation of the beneficiary of the contract is as follows:

- The money paid by the insurer is outside the succession; consequently, the money is neither subject to hotchpot (the process of returning to the mass of the succession any properties that a beneficiary has received in advance of his or her share so as to achieve equal division between beneficiaries) nor reducible through action for abatement.
- Furthermore, the premiums paid by the policyholder are also not subject to hotchpot or abatement and may not be considered as forming a voluntary disposition subject to hotchpot or action for abatement unless the premiums paid were clearly exaggerated compared to the person's income or assets.
- From a fiscal viewpoint, money paid by the insurance company is not, in principle, part of the taxable estate.

However, this money may be partially taxable in application of specific tax rules:

- Premiums paid by the insured after age 70 will be subject to inheritance tax for the portion exceeding €30,500 (Article 757B, CGI); conversely, interest generated by these premiums remains non-taxable.
- A special 20% tax is levied on money paid by the insurance company in excess of €152,500 per beneficiary on the amounts corresponding to the premiums paid prior to the insured's 70th birthday.

The tax rate is 25% on the portion of the net taxable profit exceeding €902,838.



10. Civil law on succession

10.1 Estate planning

The purpose of estate planning is to achieve two main objectives:

- A civil objective: to make it possible to anticipate the transfer of one's assets according to one's wishes, in order, for instance, to favor one's spouse.
- A tax objective: to limit the taxation impact of the transfer of assets.

Civil objective

The objective may be to give the surviving spouse more than he or she is normally entitled to receive, and in such cases, it will be possible to modify the matrimonial property regime or to provide for marital benefits. In these contexts, unlike in the case of donations and wills, the transfer of wealth is performed free of tax in France.

The objective may also be to give a person outside the family a part of the wealth, and in such cases, it will be possible to use a hand-to-hand gift (don manuel), a life insurance contract or a joint tenancy (Pacte Tontinier).

Another objective may be for a non-French resident to avoid the fragmentation of his or her wealth between their home country and France where they own real estate (which, in principle, would be a French civil and tax law matter). In this case, it would be possible to modify this link with France with the creation of a French non-trading company (société civile française). Indeed, French civil law considers that the shares of such a company are movable assets to be attached to the residency of its owner. This technique also makes it possible to avoid the French tax normally due if the tax treaty between France and the owner's country of residence does not classify such shares as real estate property (should this be the case, such a company would be considered as a predominantly real estate company).

Finally, it should be noted that within the context of estate planning, two vehicles are often used in France:

- A French non-trading company, which is a company with a wide corporate purpose and a simple method of functioning, facilitating the transfer of wealth.
- Separation of the attributes of ownership of an asset by separating temporarily, on the one hand, the right to use and the right to benefit from the revenue of those rights and, on the other hand, the right to dispose of such an asset (sale, modification, transfer). This separation makes it possible:
  - From a French civil law point of view, to split the powers of the assets between different people.
  - From a French tax point of view, to reduce the impact of the taxation on the transfer.

Tax objective

The main objective will be to limit the tax burden, especially in the case of transfers.

Among the most commonly used estate planning vehicles are the non-trading company and the separation of attributes of ownership (démembrement de propriété).

The objective may be for a parent to transfer to their children only the bare ownership of property by a donation, which reduces the tax base accordingly. Upon the death of the usufructuary, the usufruct ends and the bare ownership of the property is reconstituted in the hands of the children, free of tax.

The objective may also be for a parent to acquire an asset through a non-trading company and to transfer the shares to his or her children every 10 years to allow the application of the lower rates of the tax scale.

10.2 Succession

The fundamental principles of estate law and voluntary dispositions are as follows:

1. The law classifies presumptive heirs by category and degree starting with the category of descendants. If there are heirs in the first category, they supplant the next category; furthermore, within one category, the inheritance goes to the heirs that are the closest relatives.

2. The heirs become owners of the assets of the deceased upon the death thereof without formalities except when an administrator is appointed.

3. The heirs, considered as successors of the deceased person, are liable for the debts of the estate even in excess of the amount of the assets, unless they have filed an official declaration with the regional court (tribunal de grande instance) stating that they accept the inheritance only to the extent of net assets.

4. The limiting of the right for a person to dispose of his or her estate is free of charge, in order to guarantee that the heirs receive a part of the estate considered as intangible (the reserved portion of the estate of the deceased).

5. There is a ban on the heir disposing of a future estate beforehand or waiving it before the opening of the succession (ban on future estate pacts), except for gifts between spouses and agreements as to future successions for waiver of action for abatement.

6. Gifts are generally irrevocable.

7. It is impossible to disinherit a descendant.

8. There is a principle of equality among heirs of the same degree (except for the disposable portion).

Transfer of property

French tax law provides for specific rules regarding the transfer of property. However, a person may want to organize his or her own succession to favor a certain member of his or her family. To achieve this goal, the following may be used:

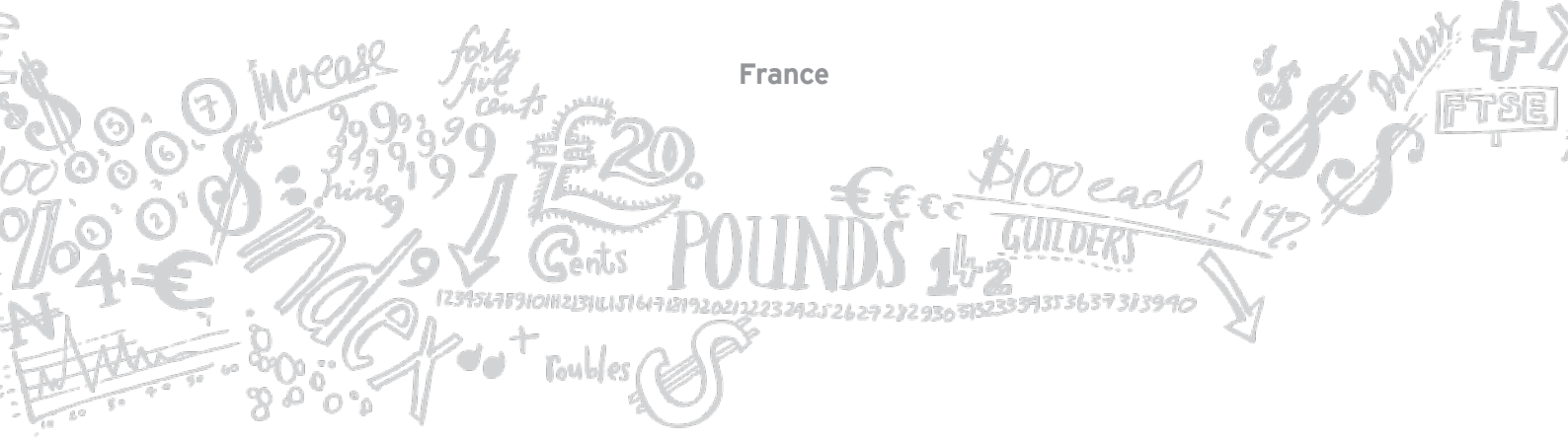
- With respect to the person's spouse, marital benefits or a gift between spouses and a will.
- With respect to the person's children or any other person, gifts or a will.

The freedom to dispose of one's assets is limited by the rights of the descendents of the deceased and the deceased's spouse on an intangible portion of the estate known as the reserved portion. The available portion is called the disposable portion.

The portion reserved for the children of the deceased is equal to half of the estate if the deceased is survived by only one child. It is equal to two-thirds of the estate if the deceased is survived by two children and three-quarters if the deceased is survived by three or more children. The portion reserved for the spouse is one-quarter of the estate and only exists if there are no descendents.

A person may freely dispose of the disposable portion and specifically benefit his or her spouse (through a gift between spouses or through a will) (see below), by choosing between:

- Usufruct of the entire estate.
- Unrestricted ownership of the disposable portion.
- Ownership of one-quarter of the estate and usufruct of three-quarters.



To ensure compliance with the reserved portion and equality among heirs, at the opening of the succession, the voluntary dispositions and bequests made must be verified (through the hotchpot process) in order to limit them if necessary (a process known as action for abatement, i.e., where heirs claim back part of an excessive lifetime gift by the deceased that has detracted from their legal share of the inheritance).

Transfer and division of the estate

Heirs may simply accept the estate, which would make them the owners of all of the assets and liabilities of the deceased. They may accept it up to the net assets in order to limit their liability on the estate debts or they may waive their right to the inheritance.

The heirs, as a result of the sole fact of the death, have the ownership and can administer the estate of the deceased. However, a person may, by means of a notarized act, designate during his or her lifetime one or more administrators of the estate (posthumous mandate).

To determine the portions of each heir, the following is done:

- The matrimonial regime of the deceased is canceled so that the spouse can be attributed the portion of joint assets to which he or she is entitled.
- A statement of the deceased's assets is drawn up as if at the time of the division the deceased had never made any voluntary distributions; this ensures that the reserved and disposable portions are calculated.
- Action for abatement of excessive voluntary dispositions is brought by the forced heirs entitled to the reserved portion against the beneficiaries of these dispositions; however, the heirs may waive this action for abatement by notarized act (agreement as to future succession) prior to the opening of the succession.
- The bringing into hotchpot of the voluntary dispositions already made, provided that the heir that has received them is presumed to have received a portion of his or her future inheritance in advance (except, among other things, divided gifts (donation-partage) not subject to the hotchpot process).

Other gifts, free conveyances and voluntary dispositions

To offset the rules of devolution by law, French law offers several legal mechanisms that become effective either immediately and irrevocably (gifts) or at the time of death of the trustee (gift between spouses of future assets or bequests by will).

It would be impossible to address here the various types of gifts or bequests or their conditions of validity and system. We will simply cite the principal ones along with their fundamental features.

Gifts

A gift *inter vivos* is in principle a notarized act by which the donor transfers an asset immediately and irrevocably to the beneficiary. In principle, it is subject to hotchpot unless otherwise directed by the donor.

It may also carry obligations imposed by the donor on the donee (gift with a condition attached) such as gradual gifts (gifts made to a person who would transfer the assets received upon his or her death to another person designated by the donor) and residual gifts (gifts made to a person who would then transfer what is left from the assets at his or her death to another person designated by the donor).

Bequests

Bequests are provisions that become effective upon the donor's death as part of a will. They may pertain to the entire succession (universal bequest), or to a share of a succession (legacy by general title) or private assets (specific bequest). They may be gradual or residual, similar to gifts, and are set up through a will.

Under French law, four types of wills are authorized:

- The authentic will received by two civil law notaries or a notary and two witnesses.
- The holographic will written entirely by the testator by his or her own hand.
- The secret will prepared by the testator and given in an envelope to a civil law notary.
- The international will.

A will is freely revocable by the testator at any time.

Gifts of future assets between spouses

By will or by a notarized gift act (gift to the last survivor), it is possible to give one's spouse specific assets or a portion of one's assets. The effective date of the gift (as in the case of a bequest) is the date of death of the donor. This type of act may always be revoked. The maximum that may be transferred to the spouse is the disposable portion between spouses.

Impact of private international law

In successions, French private international law has adopted the rule of scission with regard to the law applicable to the succession.

Succession to immovable property is governed by *lex rei sitae* (law of the place where the property is situated). Conversely, succession to movable property is governed by the rule of the deceased's last domicile.

The defined law applicable to the succession is competent to determine the presumptive heirs, establish links of kinship, presumptive heirs who are forced heirs, the amount of the reserved and disposable portions of the estate, the succession rights of the surviving spouse (although there may be some interferences with the rights of the spouse derived from the matrimonial system) and the legal classification of the assets.

In particular, shares in real estate companies are considered movable property under French law, while most foreign legislations classify them as immovable property.

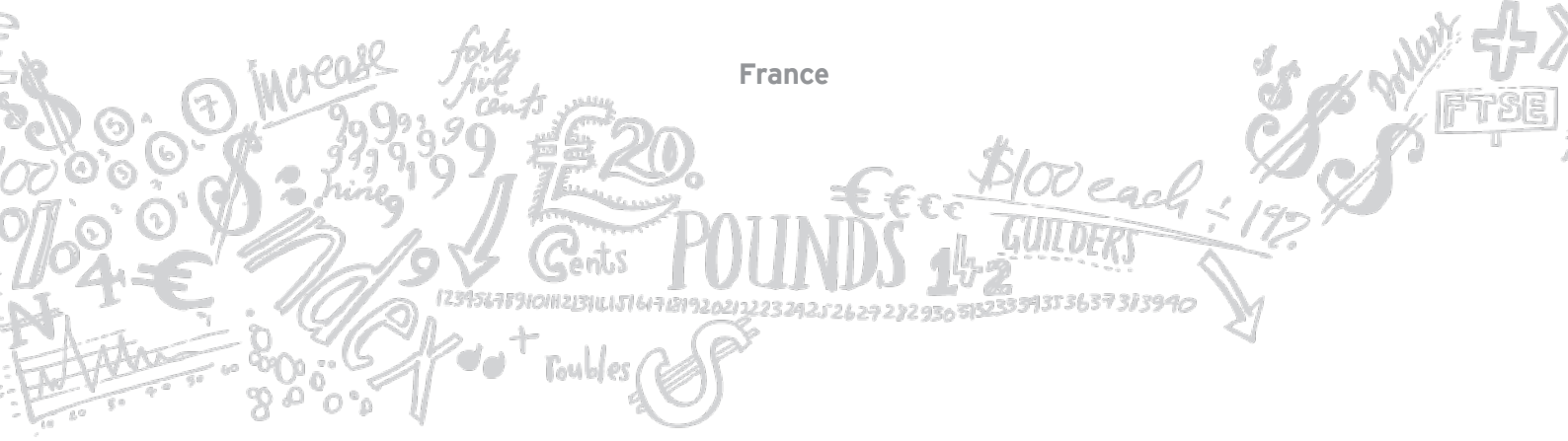
The scission system provided for by French law can create inequitable situations, either favoring the spouse too strongly or depriving the latter of any right based on *lex rei sitae* and the rights of the forced heirs for each group of assets subject to various national laws that will be considered as many separate successions.

Testate successions are also subject to rules regarding the law applicable to the succession presented above. Professio juris is not accepted by French law; the testator cannot designate the law applicable to his or her estate.

The choice-of-law rule in French estate law could be inapplicable on the one hand in cases where the foreign law designated by French law refers back to French law by refusing its own competence and, on the other hand, in the event of the exercise of the right to levy (Law of 14 July 1819).

To illustrate referral, we will use the example of a French person who dies in an apartment that he owns in Venice, which is his domicile. French law designates Italian law as the competent jurisdiction to manage the succession. Nevertheless, Italian law designates the deceased's national law to be solely competent. The entire estate will be subject to French law.

Furthermore, private international law rules can be set aside by the right to levy instituted by the Law of 14 July 1819, which created a nationality privilege in favor of French nationals. Thus, in the case of the division of an estate between joint foreign and French heirs, these heirs have the right to draw from the French group of assets a portion equal to that from which they would be excluded by application of the foreign law.



When the law or laws applicable to the estate are defined according to the principles described above, it is necessary to proceed with the division of the estate.

We will not address the very complex issues raised by the estate division processes.

In fact, very frequently, in the event of death the marital regime must first be canceled in order to determine the amount of the assets that are purely part of the estate.

The assets belonging to the marital property may be located in various countries that provide for different rules with respect to marital property and inheritance, while at the same time the actions of the deceased (gift, enrichment of a spouse by virtue of matrimonial property, etc.) are not recognized by the legislations concerned.

The combination of national law and private international law may create situations that are contrary to the deceased's will and cause conflicts between the heirs and the surviving spouse.

10.3 Forced heirship

The portion reserved for the children of the deceased is equal to half of the estate if the deceased is survived by only one child. It is two-thirds of the estate if the deceased is survived by two children and three-quarters if the deceased is survived by three or more children. The portion reserved for the spouse is one-quarter and only exists if there is no descendent.

10.4 Matrimonial systems and civil partnership

In France, spouses who marry without a marriage contract have a joint estate by law.

The spouses may also, by contract:

- Adjust the community system
- Adopt the system of sharing after-acquired property
- Adopt the system of separation of property

Community of marital property

In the community property system, the assets are divided into three groups:

- The separate property of each of the spouses, including assets that the spouses had prior to their marriage, assets received through a succession, gift or bequest, or assets acquired through reinvestment of private property or separate property of the spouse by accessory (for example a house built on the spouse's separate property land).
- Joint assets that include acquisitions made together by the spouses with their gains and salaries, their savings and revenues from their own separate property.
- At the end of the contract (by death, divorce or change of system), each of the spouses receives the separate property assets and proceeds and then the joint assets are shared. When the community property is shared out, the transfers of wealth that have occurred during the marriage between the two spouses' separate property assets and the joint assets must be determined in order to indemnify any assets that have increased in value at the expense of the others.

Adjustment to community property — marital benefits

Under the community property system, the spouses may, by means of a prenuptial agreement, make changes to the content and rules of sharing the community property as they see fit.

Some of the most frequently used clauses are:

- Universal community, by which all of the assets, even those that are a spouse's separate property, are considered joint assets.

- The preciput clause, which sets forth that the surviving spouse, prior to any division, has the right to receive a predefined item from the community property.
- The clause of allocation in full of all of the joint assets to the surviving spouse.

It should be noted that all of these clauses, called marital benefits, even if they are intended to benefit a spouse, are not considered gifts from a civil law viewpoint (no possible challenging for the heirs) or from a tax viewpoint.

The marital benefits method is used very frequently in order to favor one's spouse in the event of future succession.

Separation of property

Each of the spouses is the sole owner of his or her assets and revenues. If an asset is acquired with the other spouse, that asset is owned jointly by the spouses. In the event of dissolution of this system, each spouse would reclaim his or her assets and the undivided property based on the contribution of the spouses for their acquisition.

Sharing after-acquired property

This system is inspired by German law. While the system is in force, it functions as a separate property system. After it ends, each of the spouses has the right to enjoy half of the value of the enrichment that has occurred in the assets of the other spouse.

Aspects of private international law relating to matrimonial systems

On 1 September 1992, France adopted the law from the Hague Convention of 14 March 1978, applicable to matrimonial property regimes.

The spouses may choose the domestic law that will govern their matrimonial property regime either by applying:

- The laws of the country of which one of the spouses is a national.
- The laws of the country in which one of the spouses has his or her habitual residence.
- The laws of the country in which one of the spouses establishes his or her habitual residence after the marriage.

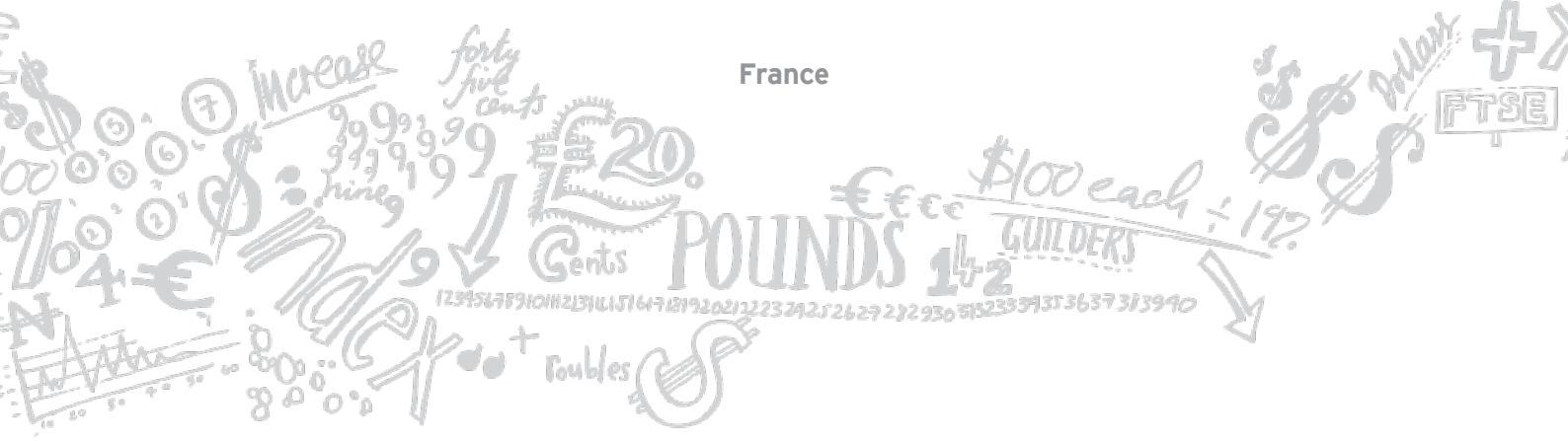
The law thus chosen applies to all the assets of spouses, but it is possible to choose to have immovables governed by the law applicable to the place where the immovables are located.

If the spouses have not designated the law applicable to their matrimonial property regime, the latter will be subject to the domestic law of the country in which they established their first habitual residence. If there is no such shared residence, the applicable law shall be that of their common nationality. The spouses may, during marriage, voluntarily choose to modify their matrimonial property regime and the law that will be applicable thereto, regardless of whether they had initially selected the domestic law and matrimonial system. However, this choice is limited to the laws described above.

If the two spouses have not voluntarily chosen the domestic law applicable to their matrimonial system and have been subject to the law of their first habitual residence, in the event that they then change their country of residence, the law applicable to them will automatically change, unless they express their objection to such change.

The two principal cases of such change are:

- When the spouses establish their habitual residence in the country of which they are both nationals.
- When the spouses have been residents in a country for more than 10 years.



Civil partnership

From the point of view of personal asset management, a civil partnership registered in France creates neither a marital regime nor inheritance rights between the partners. The partners' asset regime only applies to the assets acquired during the civil partnership, which are assumed to be in joint ownership, unless a clause in the civil partnership agreement provides for another option. The transfer of property between partners can only be settled by donations, wills and joint acquisition (notably with the use of a non-trading company).

French law recognizes the consequences on the estate in France of a civil partnership registered under foreign law only for the movable or immovable assets owned in France.

However, from a tax point of view, deductions and the tax scale are the same for married spouses as for the partners of a French registered civil partnership. Thus, a partner of a French registered civil partnership is exempt from any inheritance tax.

Partners of a civil partnership registered in another country cannot benefit from the tax advantages of French civil partnership legislation, even if the gift or succession is made under the French tax system. In order to benefit from the French tax legislation, it would therefore be necessary to enter into a French civil partnership.

10.5 Intestacy

When the deceased has not organized the succession by will, by adjustment to the marital property system or by gift to his or her spouse, the heirs and their rights can only be determined by law.

The rights of the heirs to the succession are different depending on whether the deceased is survived by a living spouse or not.

The following are the principal cases that could occur:

- If the deceased is survived by his or her spouse and children they had together, the spouse may choose between usufruct of the entire succession or full ownership of one-fourth of such succession. If the deceased has one or more children from a different relationship, the spouse can only inherit one-fourth in full ownership.
- If the deceased is survived by his or her spouse, but has no descendents, nor father or mother, the spouse inherits the entire succession except for half the assets still listed in the succession that the ascendants would have given to the deceased and to which the siblings of the deceased or their descendents are entitled.
- If the deceased is survived by his or her spouse with no descendent, but with an ascendant, the spouse inherits half and the father and mother of the deceased each inherit one-fourth. In addition, the father and mother are entitled to have the assets that they had previously given to the deceased returned to them. If the deceased is not survived by a spouse but by descendents, such descendents are entitled to the succession in equal shares.
- If the deceased is not survived by a descendent or by a spouse, the parents of the deceased as well as his or her siblings are all entitled to the estate.

It should be noted that in all the aforementioned situations in which there is a surviving spouse, the latter is entitled to enjoy for life the primary residence of the spouses and a preferential allotment of that home at the time of distribution of the estate.

10.6 Probate

Probate proceedings do not apply under French law because the inheritance passes to the heirs by way of universal succession.

11. Estate tax treaties

11.1 Unilateral rules

In case of the absence of a tax treaty, when a French resident transfers any assets free of charge (transmission à titre gratuit), double taxation is avoided in France by the application of a unilateral rule.

The tax paid in another state can be offset against the tax due in France (Article 784 A, CGI).

This rule may also be applied for wealth tax when a French resident is liable for this tax on assets located in a foreign country. In the case of the absence of a tax treaty, wealth tax paid to another state on assets located outside France may be offset against French wealth tax.

11.2 Double tax treaties

France has concluded inheritance tax treaties with the following countries:

- Algeria, Austria, Bahrain, Belgium, Benin, Burkina Faso, Cameroon, Central African Republic, Congo, Finland, Gabon, Germany, Guinea, Italy, Ivory Coast, Kuwait, Lebanon, Mali, Mauritania, Mayotte, Monaco, Morocco, New Caledonia, Niger, Oman, Qatar, Saint-Pierre-et-Miquelon, Saudi Arabia, Senegal, Spain, Sweden, Switzerland, Togo, Tunisia, the United Kingdom, United Arab Emirates and the United States.

France has concluded gift tax treaties with the following countries:

- Austria, Germany, Guinea, Italy, New Caledonia, Saint-Pierre-et-Miquelon, Sweden and the United States.

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