France

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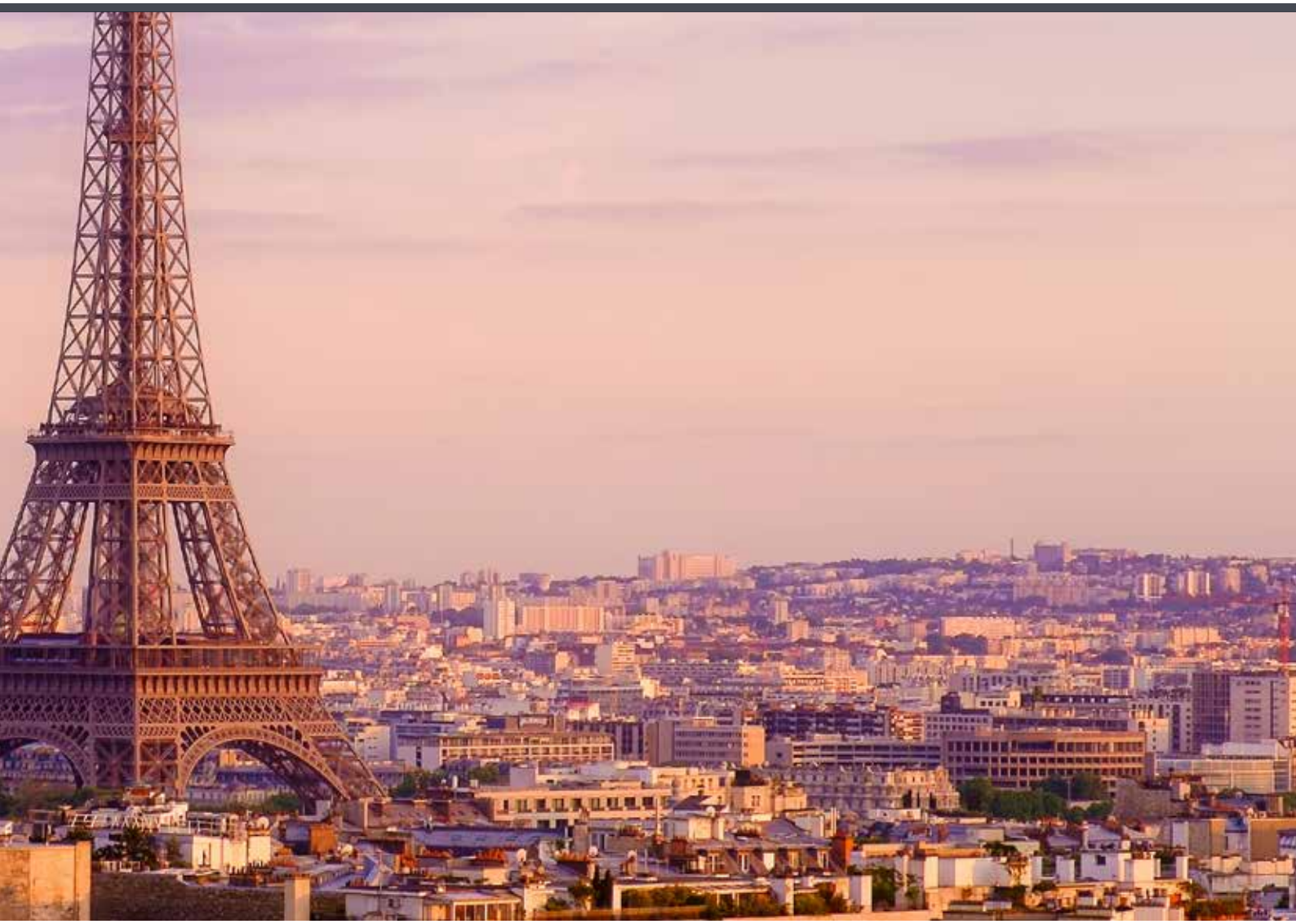
1. Types of tax

France taxes all transfers regardless of whether there is a transfer of assets resulting from a death or a gift.

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

- With a few exceptions, the rules applicable to donations and successions are the same.
- Successions in general take into account gifts between the deceased and the heirs (back-tax rule) (see Section 1.1).

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



Additionally, France imposes taxes on:
- French real estate owned (property tax and wealth tax) or occupied (dwelling tax)
- French real estate owned anonymously (3% tax on real estate)

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

The following rules apply, subject to the provisions of double tax treaties.

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.

Based on territoriality rules, tax must be paid in France if:
- The deceased was a French tax resident.
- The heir is a French tax resident at the deceased's time of the death and has been a French tax resident for a period of six consecutive or nonconsecutive years during the 10 years prior to said death.
  Or
- The assets are located in France.

Based on 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 (see Section 6.1).

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

The net share received by each heir will:
- Include a tax allowance that depends on the kinship of the beneficiary with the deceased (see Section 3.1).
- Be subject to a tax rate based on a scale that depends on the kinship of the beneficiary with the deceased (see Section 3.1).

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 15 years prior to the death (back-tax rule).

The back-tax rule concerns all forms of gifts (e.g., gifts by notarized act, hand-to-hand gifts, *inter vivos* distribution). According to this rule, estates preceded by gifts made less than 15 years prior to death 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 15 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

Based on territoriality rules, a tax is due in France on a gift if:
- The donor is a French tax resident.
- The donee is a French tax resident at the time of the gift and has been a French tax resident for a period of six consecutive or nonconsecutive years during the 10 years prior to the gift.
  Or
- 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, in principle, considered a supplemental gift.

In principle, gifts follow the same tax rules as estates subject to certain differences. These pertain to:
- Exempt gifts
- Allowances
- Rates
- Tax reductions
- The earlier-gifts rule, when at least 15 years separate two successive gifts between the same people

In principle, any liability can be deducted from the taxable base of a gift (see Section 6.2).

Particularities concerning hand-to-hand gifts

In France, hand-to-hand gifts (*don manuel*) are not taxable if they are not declared to the French tax authorities.

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 beneficiary of the gift 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, but if the gift was a cash gift, it is reported at its face value at the date it was made. Payment is made at the time of declaration.

The beneficiary of a hand-to-hand gift whose value exceeds EUR15,000 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.

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

Transfers of real estate or real estate rights in return for payment are, in principle, subject to a real estate registration tax (*droits d'enregistrement*) at a rate of 5.8%. This tax is computed on the fair market value of the real estate or real estate rights transferred. The tax is due by the purchaser.

The sale must be recorded in a notarized deed that the notary files with the territorially competent mortgage office (formerly the *bureau des hypothèques, now called the service de la publicité foncière*) along with the payment of the tax.

1.4 Real estate wealth tax (*Impôt sur la fortune immobilière*)

With effect from 1 January 2018, the former French wealth tax (*impôt de solidarité sur la fortune*) has been abolished and replaced by a new tax on real estate wealth (*impôt sur la fortune immobilière*).

Subject to the application of international tax treaties, the following are liable to French real estate wealth tax:
- French tax residents whose net fair market value of their worldwide real estate assets exceeds EUR1.3 million
- Non-French tax residents whose net fair market value of their real estate assets located in France exceeds EUR1.3 million

The taxable worth for a year is assessed on 1 January of each year (see Section 6.3).

This concerns, in particular, real estate assets held directly or indirectly by companies or via investments, such as real estate investment trusts (*SCPI*), undertakings for collective investment in transferable securities (*OPCVM*), collective real estate investment schemes (*OCPI*), listed real estate investment companies (*SIIC*), real estate companies and real estate units of account in redeemable life assurance contracts.

When real estate assets are held indirectly by a company, only the fraction of the value of the shares representing the real estate is taxable.

In addition, to limit the effects of this tax, tax exemptions and tax reliefs (see Section 4.2), as well as a wealth-tax-capping mechanism, exist (see Section 4.2).

1.5 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 depending on the location of the asset.

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

1.6 Dwelling tax (*taxe d'habitation*)

Dwelling tax is levied on the person who occupies the residence on 1 January of a given year and must be paid by 15 November of that year.

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

Like property tax, the residence tax is based on the cadastral rental value. The taxpayer can challenge the value used if he or she believes it is too high.

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

The dwelling tax on main residences has been abolished since January 1, 2023. However, the dwelling tax remains due for all furnished premises occupied by:

- The owner or usufructuary, or tenant when using the premises as a secondary residence, meaning a furnished accommodation (and its dependencies) that is not their primary/main residence
- Companies, associations and private organizations, when these premises are not subject to the business property tax (CFE)
- State, departmental and municipal organizations, as well as scientific, educational and assistance public establishments, when these premises are nonindustrial or commercial in nature.

Article 16 of the French 2020 Finance Act provided for the gradual and definitive cancellation of residence tax over the period from 2020 to 2023 for a taxpayer's main residence only.

1.7 Tax on vacant properties (*taxe sur les logements vacants*)

The tax on vacant properties is an imposition in France aimed at encouraging the rental or sale of properties that have been unoccupied for an extended period. It is enforced by certain municipalities in areas where demand for housing is high.

Property owners of vacant homes may be subject to this tax if they do not occupy or lease their property for a duration defined by law. It is an alternative to the tax on secondary homes (see Section 1.6).

The amount of the tax may vary based on several factors, such as the property's location and size.

1.8. 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 nonresident, from evading real estate wealth 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.

Legal entities can be exempted from this tax if their real estate assets in France are not assigned to their own professional activity or to the activity of their subsidiaries, represent less than 50% of their French assets, and are held directly or indirectly through interposed entities.

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

A legal entity cannot be exempted from the 3% annual tax if it does not fulfill its reporting obligations on time (Cass. com., 04/11/2020, no. 18-11.771, Lupa).

A legal entity must be able to prove that the information provided on the tax form is correct (Cass. com. 12-10-2022 n° 20-14.073). To prove the identity of its shareholders, a company may produce (1) corporate documents filed with the courts or public services of the state of residence of the entity, (2) declarations filed with the tax authorities of the state of residence of the entity, (3) documents authenticated by a member of a regulated profession recording the distribution of securities, or (4) movements of securities or any other official document issued by the foreign administration specifying the identity and address of the shareholders and the number of shares or rights held.

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. As of 2021, the 3% tax return will have to be filed online, which requires the taxpayer to apply for an identification number (a "SIREN") by submitting an EEO tax form.

In addition, as of 2022, the 3% tax on the market value of real estate must also be paid by electronic payment.

Therefore, a resident or a nonresident 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, FTC).

The rules governing the determination of the residency of the deceased, donor or beneficiary are those applicable to income tax (Article 4 B, FTC), 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

Based on the territoriality rules, gift tax applies in three situations:
1. 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.
2. When the deceased or the donor is domiciled outside France and the beneficiary has been domiciled in France for at least six years during the 10 years prior to the death or donation, all movable and immovable properties located in France or outside France are subject to tax in France.
3. If the deceased and the donee are non-French tax resident, gift tax will only apply on assets located in France.
4. French assets include 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) located in France.

In the first and second of the above three situations, tax paid outside France on assets located outside France can be deductible from the tax due in France (Article 784 A, FTC).

Since 1 January 2020, certain senior executives of companies whose registered offices are located in France and that generate revenue exceeding EUR250 million in France may henceforth be deemed to be resident in France for tax purposes, regardless of the usual criteria. This may have an impact on current taxation as regards inheritance and gift tax: in fact, if a senior executive can be considered a French resident, France could tax without limit any assets he or she transfers by gift or on death. The same unlimited tax liability applies if this senior executive can be considered to have been resident for at least six years during the last 10 years: all assets transferred to him or her by gift or on death, whatever their location, are taxable in France.

Nevertheless, in the event of a conflict of residence between two countries, the country of residence may be determined in accordance with a double tax treaty.

Impact of international tax treaties

France has signed 37 treaties relating to inheritance tax and 10 treaties relating to gift tax (see Section 11.2), which significantly override the rules presented below.

Most of the treaties follow these rules (e.g., Spain, Monaco):
- 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, 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.
- The tax rate applicable to the French assets received by a beneficiary who is a French resident and who has also received assets outside France, which are not taxable in France under the provisions of the treaty, is calculated by taking into account non-French assets (the effective rate rule).

The most recent treaties follow other rules (Belgium, Germany, Italy, Sweden, the United Kingdom and the United States):
- Each state applies its own law to the succession of persons who are residents of its territory.
- The state of residence of the deceased grants a tax credit on the tax that it has calculated under its own law equal to the tax levied by the other state on assets subject to double taxation.

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 if both the deceased or the donor and the beneficiary are not French residents at the time of the transfer.

Because 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 six 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 real estate wealth tax

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

Non-French residents who settle in France may be temporarily exempt from real estate wealth tax for the first five years after their establishment in France on assets that they possess outside France, provided that they have not been domiciled in France during the last five calendar years preceding the year of their establishment.

Since 1 January 2020, certain senior executives of companies whose registered office is located in France and that generate revenue exceeding EUR250 million in France may henceforth be deemed to be resident in France for tax purposes, regardless of the usual criteria. Liability for real estate wealth tax is unlimited for individuals who are French tax residents, unless otherwise provided for by tax treaties.

Nevertheless, in the event of a conflict of residence between two countries, the country of residence may be determined in accordance with a double tax treaty. Therefore, the new criterion could have an impact on taxation situations when a tax treaty concerning real estate wealth tax has been concluded with France. This is the case for Belgium, Denmark and the United Kingdom.

Impact of international tax treaties

France has concluded more than 50 tax treaties regarding wealth tax (see Section 11.2).

Most of these tax treaties follow the same principles (for example, Austria, Germany, Italy, Spain, Switzerland and the United States):
- Real estate is taxed in its state of location and in the state of residence 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 residence of the taxpayer.
- Double taxation is avoided through the tax credit method.

Certain other treaties (for example, Luxembourg, the Netherlands and Poland) apply the method of exemption by granting to only one state the right to tax according to the following rules:
- For real property, only in the state of location
- For other assets, solely in the state of residence of the taxpayer
- Each state taxes the elements of wealth reserved for it at the tax rate that would be applicable to the entire fortune (effective rate rule)

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:
- EUR100,000 for direct line inheritances and gifts (scale applicable as from 1 September 2012)
- EUR15,932 for inheritances between siblings
- EUR159,325 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:
- EUR80,724 for gifts between spouses
- EUR31,865 per share for all gifts to grandchildren
- EUR5,310 per share for all gifts to great-grandchildren

The back-tax rule for gifts given less than 15 years ago is applicable. Therefore, this allowance is applicable only once every 15 years.

Rates

The rates 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 (EUR)	Rate (%)
Up to 8,072	5%
From 8,073-12,109	10%
From 12,110-15,932	15%
From 15,933-552,324	20%
From 552,325-902,838	30%
From 902,839-1,805,677	40%
1,805,678 and above	45%

Transfer between siblings:

Value transferred (EUR)	Rate (%)
Up to 24,430	35%
24,431 and above	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 (EUR)	Rate (%)
Up to 8,072	5%
From 8,073-15,932	10%
From 15,933-31,865	15%
From 31,866-552,324	20%
From 552,325-902,838	30%
From 902,839-1,805,677	40%
1,805,678 and above	45%

Tax reductions

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 if the donor is under 70 years of age, in the event of a full ownership donation only (Article 790, FTC).

3.2 Real estate wealth tax scale

The scale includes six rates:

Fraction of net taxable value of real estate assets (EUR)	Applicable rate (%)
Not exceeding 800,000	0%
Greater than 800,000 and less than or equal to 1.3 million	0.50%
Greater than 1.3 million and less than or equal to 2.57 million	0.70%
Greater than 2.57 million and less than or equal to 5 million	1%
Greater than 5 million and less than or equal to 10 million	1.25%
Greater than 10 million	1.50%

If the net taxable value of the real estate assets is equal to or greater than EUR1.3 million, but less than EUR1.4 million, the tax is calculated according to the scale shown in the table above and is reduced by EUR17,500 – 1.25%P, where P is the net taxable value of the assets.

The tax is reduced by the difference between:
- The amount of wealth tax and of all the taxes due in France and outside France in respect of the revenue for the previous year
- 75% of the worldwide revenue received

4. Exemptions and reliefs

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:
- Units or shares in companies with a business activity 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 (*Pacte Dutreil*) for up to three-quarters of their value (Article 787 B, FTC)
- 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, FTC), reduced to half of their value if the amount exceeds EUR101,897 (Article 793 bis, FTC)
- Units in rural land groups under certain conditions (Article 848 bis, FTC)
- Buildings classified as historical or related monuments and shares in real estate companies owning such buildings under certain conditions (Article 795 A, FTC)
- Gifts and bequests to the state, public authorities, scientific and educational public institutions, certain associations or foundations recognized to be of public interest acting in a charitable context, charitable organizations, environmental protection institutions, animal protection, medical or scientific research (Article 795 A, FTC)

Specific exemptions from inheritance tax

An inheritance received by the surviving spouse is fully exempt from inheritance tax (Article 796-0-bis, FTC).

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 (Article 796-0-ter, FTC).

Specific exemptions from gift tax

Certain gifts in kind to a child, grandchild or great-grandchild are exempt from gift tax for up to EUR31,865 if the donor is younger than 80 years old and the donee is of full age or is an emancipated minor (Article 790 G, FTC).

The declaration and registration must be made within one month of the date of the gift.

This exempt gift must be declared and can be renewed every 15 years.

4.2 Exemptions and reliefs from real estate wealth tax

Exemptions

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

- Real estate assets and rights held directly or indirectly and assigned to operations in industry, commerce, the liberal professions, agriculture or crafts (Article 965, FTC); this concerns the shareholders of companies that hold real estate assets intended for their own professional operation and shareholders who directly or indirectly hold a professional operating company that, in turn, directly or indirectly owns real estate assets that it makes available to another company in the same group as that to which it belongs for the purposes of the professional operation of said other company, provided that it has *de jure or de facto* control of it
- Real estate assets or rights needed for the exercise of a profession, including company shares under certain conditions (Article 975, FTC)
- The fraction representing operating real estate of 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) (Article 975-III, FTC)
- Rural property and shares in agricultural land groups under certain conditions (Article 976, FTC)
- Woodlands and forests, as well as forest group units, for three-quarters of their value, if they are operated according to specific standards (Article 976, FTC)

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

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

Reliefs

A measure has been put in place to reduce the tax payable.

- Tax relief in respect of gifts to certain not-for-profit organizations of general interest, equal to 75% of the payments made and capped at EUR50,000 (Article 978, FTC)

Cap on real estate wealth tax

For taxpayers resident in France, the amount of the real estate wealth tax calculated after application of the scale above and potential tax reductions may be reduced so that the cumulated amount of wealth tax and various other taxes paid by these taxpayers does not exceed 75% of their overall revenue (Article 979, FTC).

A new anti-abuse rule was introduced by the Finance Bill for 2017 targeting taxpayers who deliberately limit their income in order to benefit from the wealth tax cap mechanism by creating an intermediary company that is subject to corporate income tax, controlled by the taxpayer and would receive the dividends that the taxpayer normally would have received directly (the so-called "cash box" scheme). From 1 January 2017, the law now provides that the tax authorities may take these dividends into account for the calculation of the cap.

5. Filing procedures

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 the death 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 tax center for nonresidents.

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 tax center for nonresidents otherwise.

Hand-to-hand gifts exceeding EUR15,000 may be declared one month following the donor's death (see Section 1.2).

5.3 Real estate wealth tax

Taxpayers subject to real estate wealth tax must indicate each year the amount of the gross and 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.

5.4 Disclosure of trusts

As of 1 January 2012, a trustee must comply with several filing requirements when:

- The trustee or the settlor or the beneficiary (or beneficiaries deemed settlors after the initial settlor passed away) is French tax-resident.
  Or
- One or more of the assets or rights placed in the trust is located in France.

As of the Ordinance No. 2020-115 of 12 February 2020 regarding the strengthening of French Anti-Money Laundering and Financing Terrorism (AML/FT) framework, following the requirements mandated by the European Union (EU) Directive 2018/843 of 30 May 2018, a trustee must also comply with filing requirements when:

- The trustee is established or resident outside the EU.
- The trustee acquires real estate or enters into a business relationship in France.

The French tax law institutes two types of reporting obligations. These two reporting obligations are an event statement and the annual statement:

- Event statement: The event statement must be filed the month following the event (in a declaration nº2181-TRUST1). This form must be completed in French when the trust is constituted, modified or ceases to exist.
  The event triggering the reporting should be mentioned (i.e., changes to any amendment of the trust deed terms, the operating method; the settlor, beneficiary or trustee; the death of any of the parties involved; any transfer of assets in or out the trust; any transmission of the rights or product deriving from the trust, such as the rent; or any change in the legal or factual environment that could influence the functioning of the trust). The declaration must also contain a description of the term of the deed of trust.
  Failure to file the statement when the trust assets have been duly declared for the purposes of income tax and wealth tax, as well as transfer tax on inheritance and gifts, may result in a fine equal to the fixed amount of EUR20,000 (Article 1736 IV bis, FTC).
- Annual statement: The trustee must, no later than 15 June of each year, file an annual statement of the estate assets or rights placed in the trust as of 1 January of that year, except for real estate assets or rights already declared within the context of the French real estate wealth tax due by the settlor (Form 2181-TRUST 2). The statement must describe the terms of the deed of trust and list the estate assets or rights placed in the trust and their fair market value on 1 January of the year of declaration.

The Ordinance No. 2020-115 introduces new sets of data that must be filed in the trusts' returns: the protector(s), as well as any other natural person exercising effective control over the trust, and the nationality of each member of the trust.

The annual return is accompanied by payment of a tax equal to 1.5% of the assets comprising the trust, if appropriate (see Section 7.1).

Tax reassessments relating to income, assets or rights linked to an undeclared trust may be subject to a specific penalty equal to 80% of additional tax assessments, with a minimum penalty of EUR20,000 (Article 1729-0A, FTC).

These forms must be completed in French.

5.5 Declaration of funds held outside France

When declaring their annual income, individuals resident in France must disclose any bank accounts that they hold abroad and any insurance policies taken out abroad.

A taxpayer who fails to make this declaration will be liable to a tax fine of EUR1,500 per undeclared item (EUR10,000 if the account is in a country that does not accept the exchange of information), provided that the assets have been duly declared for the purposes of income tax and wealth tax, as well as transfer tax on inheritance and gifts.

However, if said assets have not been declared for the purposes of the above-mentioned taxes, all additional tax assessments related to the amounts or income recorded in bank accounts or life insurance policies may give rise to an 80% increase (Article 1729-0A, FTC).

6. Assessments and valuations

6.1 Inheritance tax

Inheritance tax is based 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, subject to certain conditions.
- 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.
- The debts owed to the deceased as at the date of death are taken into account for their nominal amount plus interest due not yet paid and interest accrued as at that date.
- Life tenancy and bare ownership transferred through the estate have the value set by a scale established by law (Article 669, FTC).
- Lifetime usufruct: Regarding assets of which the bare ownership or usufruct is transferred, the value varies depending on 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%
91 and over	10%	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.

Inheritance tax is calculated on the share of each heir, after deduction of the deceased's debts existing as at the date of death. Debts for which the deceased is not liable as at the date of death are not deductible. The same applies to certain debts such as those of contractual origin for the benefit of an heir, except in some cases. In addition, debts concerning exempt assets are charged as a priority against the value of these assets.

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.

Debts concerning gifted assets are not deductible from the tax base of the gift tax.

6.3 Real estate wealth tax

Valuation

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%.

Real estate wealth tax is determined after deduction of eligible debt owed by the taxpayers. It includes all real estate assets and property rights owned by the taxpayer and all real estate assets on which the taxpayer holds the legal usufruct (except fully or partially exempted assets).

For the valuation of company shares, debts may be deductible, subject to certain conditions. The Finance Law for 2024 amended Article 973 of the FTC to exclude, for the determination of the taxable value of the securities held by the taxpayer, the deduction of debts contracted, directly or indirectly, by the company and not related to a taxable asset. Two alternative safe harbor clauses may applies in case the IFI value is higher the fair market value of the shares as determined after the application of the deduction limitation rules already in place. The same applies, in principle, to debts relating to the acquisition or works concerning a taxable real estate asset.

However, the deductibility of loans taken out with a member of the family group is conditional upon proof that the loans were granted in normal conditions. The deductibility of loans taken out with the taxpayer's tax household or with a company controlled directly or indirectly by the taxpayer or the taxpayer's family group is conditional upon the justification of the absence of any intention to reduce the taxable base. The same justification is required for debts contracted with any person within the scope of "owner buyout" operations.

Special rules apply in the case of bullet loans taken out by companies.

The law provides for the general principle whereby the taxation of an asset encumbered by usufruct is borne by the usufructuary as if the latter were full owner of the asset.

However, the law provides for some exceptions, via the distribution of the taxation of the separated rights among the usufructuary and the bare owner, each being liable for its share according to the legal tax rate for (i) certain legal usufructs resulting from inheritance in the presence of the surviving spouse (see Section 6.1), (ii) the sale of the bare ownership to persons who are not heirs of the donor or who have never received any gift from the donor, and (iii) the gift of bare ownership to a public institution. On the other hand, if the separation of the attributes of ownership originates from a gift or a sale (except in the case mentioned here above), the usufructuary is taxed on the full ownership of the asset from which the attributes of ownership have been separated.

Deductibility of debts

Real estate wealth tax is calculated on the value of the taxable assets after deduction of certain debts.

For debts contracted by the taxpayer, deductibility is based, firstly, on their nature (debts resulting from the acquisition of or works related to the taxable assets, in proportion to the taxable fraction) and their effectiveness. It is then based on the type of lender. Thus, loans taken out directly from a member of the tax household or via an intermediary company acting as a relay are not deductible. However, it is possible to deduct loans taken out with a company controlled by the taxpayer or the members of its family group or loans taken out directly with said group or indirectly via a company acting as a relay, if they can be shown to be of a normal nature.

Special rules apply in the case of bullet loans taken out by companies.

Lastly, the law provides for an overall cap on such debts. When the value of the taxable real estate assets exceeds EUR5 million, the debts exceeding 60% of the value of these assets can only be deducted for up to 50% of the excess amount.

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.

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). 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 settlor 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 settlor), according to territoriality rules similar to those relating to inheritance tax (see Section 2.1)
- Subject the assets owned by the trust to real estate wealth tax as if the trust did not exist, according to territoriality rules similar to those relating to real estate wealth tax (see Section 2.2)
- Create new declarative requirements for disclosure of the trusts under the responsibility of the trustees (see Section 5.4)

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 settlor is a French tax resident or when the beneficiary(ies) has (have) been domiciled in France for at least six 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 settlor nor the beneficiaries (as defined above) are French tax 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 settlor 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 settlor and the beneficiary.
- If, at the time of the death, a share is allocated globally to the settlor'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 set up after 11 May 2011, by a settlor who was a French tax resident at that time

Real estate wealth tax on the assets of a trust

Subject to the application of international tax treaties, the settlor (or after his or her death, the beneficiaries treated as the initial settlor) is subject to net real estate wealth tax on:
- The real estate assets placed in the trust, regardless of the location of such assets, if the settlor is a French tax resident
- The real estate assets placed in the trust located in France if the settlor is not a French tax resident

In the event of nondisclosure of assets placed in a trust for the purposes of real estate wealth tax, a new 1.5% tax was created as a penalty for such nondisclosure (applicable as of 1 January 2012):
- On real estate assets located in France or outside France if the settlor and the beneficiaries are French tax residents
- Only on the real estate assets located in France if the settlor and the beneficiaries are not French tax residents

This 1.5% tax would not be due on real estate assets:
- Included in the settlor's wealth tax base
- Officially disclosed but not liable to wealth tax

Those liable for the 1.5% tax are the settlor and the beneficiaries of the trust jointly. However, this 1.5% 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 *fiducie*, governed by articles 2011 to 2031 of the French Civil Code.

In some ways, the *fiducie* resembles a trust. Indeed, it allows a settlor to transfer property and rights to a *fiduciaire* (trustee) who will act on behalf 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 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 in principle not part of 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 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 accordance with specific tax rules for policies taken out since 21 November 1991:
- Premiums paid by the insured after age 70 will be subject to inheritance tax for the portion exceeding EUR30,500 (Article 757 B, FTC); this deduction is to be made on premiums paid globally on every contract, and not per beneficiary; conversely, interest generated by these premiums remains nontaxable (Article 757 B, FTC).
- A special 20% tax is levied on money paid by the insurance company in excess of EUR152,500 per beneficiary on the amounts corresponding to the premiums paid prior to the insured's 70th birthday (Article 757 B, FTC).

The tax rate is 31.25% on the portion of the net taxable profit exceeding EUR700,000.

Currently, only policies taken out before 21 November 1991 and whose premiums were paid before 13 October 1998 give entitlement to full exemption for death benefits.

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

Refer to Section 10.3 on the consequences of the new "*prélèvement compensatoire*" for estate planning, in case of application of a foreign civil law that does not recognize the reserved portion of an estate (especially common law countries).

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*).

Finally, it should be noted that within the context of estate planning, two vehicles are often used in France:
- A French non-trading company (*société civile française*), which is a company with a wide corporate purpose and a simple method of functioning, facilitating the transfer of wealth. This type of company is frequently used by nonresidents to hold real property in France (*société civile immobilière* or SCI).
- 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 15 years to allow the application of the lower rates of the tax scale.

French law includes provisions to limit the use of the separation of attributes of ownership and the use of real estate companies with a view to avoiding wealth tax or inheritance tax. These provisions include, in particular:
- The measure against the separation of attributes of ownership performed other than by a donation of bare ownership between a parent and his or her bare-owner children whereby, in the event of the death of the usufructuary, the value of the asset subject to unrestricted ownership must be added to the inheritance as if it had not previously been transferred by donation (Article 751, FTC).
- The measure — relating to real estate wealth tax — against the undervaluation of companies by means of recourse to heavy indebtedness toward the company's own shareholders who have granted it advances. In such a case, such advances are not taken into account for the valuation of the company's shares (see Section 6.3).

Abuse of law

In the presence of a tax-saving scheme, the tax authorities may use the procedure for the prevention of abuse of law (Article L64, *Livre des Procédures Fiscales* (LPF)) when the scheme appears to be legitimate and difficult to dispute.

The authorities may call the scheme into question, arguing that it is:
- Fictitious and it conceals another operation (for example, a sale at a very low price concealing a donation)
  Or
- Has been carried out solely for tax purposes, without any economic, legal, financial or family justification

In the event of acknowledgment of abuse, the penalty is equal to 80% of the tax evaded.

Article L64A, LPF, introduced pursuant to the French 2019 Finance Act, broadens the definition of "solely for tax purposes" as sanctioned by Article L64, LPF. Asset transactions could indeed be sanctioned if:

Their main purpose, or one of their main purposes, is to obtain a tax benefit that defeats the object or purpose of the applicable tax law.
They do not have genuine regard for all relevant facts and circumstances.
Article L.64 A, LPF, is applicable to fiscal years beginning on or after 1 January 2020.

10.2 Succession

The fundamental principles of estate law and voluntary dispositions are as follows:
- 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 who are the closest relatives (see Section 10.5).
- The heirs become owners of the assets of the deceased upon the latter's death without formalities except when an administrator is appointed.
- 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 judiciairede grande instance*) stating that they accept the inheritance only to the extent of net assets.
- The right for a person to dispose of his or her estate free of charge is limited 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; see Section 10.3).
- 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.
- Gifts are generally irrevocable.
- It is impossible to disinherit a descendant (see Section 10.3).
- There is a principle of equality among heirs of the same degree (except for the disposable portion).

Transfer of property

French 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 descendants 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 descendants (see Section 10.3).

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 designate during his or her lifetime one or more administrators of the estate by means of a notarized act (posthumous mandate).

To determine the portions of each heir, the following is done:
- The matrimonial regime of the deceased is cancelled 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.
- Voluntary dispositions already made are brought into hotchpot 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

As from 17 August 2015, France has applied European Regulation No. 650/2012 of 4 July 2012.

In the case of deaths occurring after 16 August 2015, new conflict-of-law rules are going to apply for the European Community States (except for Denmark, Ireland and the United Kingdom) and will concern all residents of the European Community, regardless of their nationality. In the European Community, the law applicable henceforth to a succession will be the law of the last habitual residence of the deceased and will concern real estate as well as movable assets. However, the deceased may choose, by will, to designate his or her national law as the applicable law. This choice may already be exercised but will only take effect for deaths occurring after 16 August 2015 (*professio juris*).

The EU Regulation is of a universal nature and is, in principle, also applicable to successions that include assets outside the European Community, as well as Denmark, Ireland and the United Kingdom.

Testate successions are also subject to rules regarding the law applicable to the succession presented above.

When the European Regulation designates the law of a non-EU state as the applicable law, referral may be implemented and the conflict rule for that state taken into account.

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

However, in the case of succession concerning a state not governed by this Regulation, the latter may refuse the designation of its law as the applicable law and refer to the law of another Member State of the EU or to another state, which may result in a new scission in the settlement of the succession.

For example, suppose a British national is domiciled in the United Kingdom and owns a house in France. The EU Regulation designates English law for the transmission of this house in France. However, the United Kingdom is a state that is not governed by the EU Regulation. English law refers to French law for this house. The entire succession of this British national will be governed by English law except for the house in France, which will be governed by French law. To avoid this scission, the British national should stipulate in his will that he chooses English law for this property (according to the principle of *professio juris*), but it is not certain that English law will accept the effects of such designation.

The defined law applicable to the succession determines the presumptive heirs and establishes 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), the transfer of the administration of the estate and its distribution.

The European Regulation also provides that, in the event of conflict, the competent courts shall be those of the state of residence of the deceased, if this residence is in an EU Member State. If the *professio juris* option has been exercised in favor of an EU Member State other than that of the deceased's residence, jurisdiction may be assigned to the chosen state (if the heirs so request or if the courts of the place of residence consider the choice to be relevant).

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 descendant.

In principle, if the estate does not fall within the scope of French law, then according to the rules of private international law, even if the estate includes French assets or if heirs to the estate live in France, the rules relative to the reserved portion are not applicable, as these rules do not form part of international public policy (Cass. Civ. 27 September 2017, no. 16-17198).

However, international successions in France just became more complex: Law No. 2021-1109 of 24 August 2021 reinforcing respect of the principles of the French Republic has introduced a "*prélèvement compensatoire*" mechanism that aims to ensure the efficiency of French forced heirship. It entered into force on 1 November 2021 and will apply to successions opened from that day onward.

When a deceased person has made several gifts and when a foreign law applies to a succession and provides no reserve mechanism protecting children, then any of the deceased's children or heirs or beneficiaries are entitled to claim a "*prélèvement compensatoire*" on existing assets located in France on the day of the death. However, the implementation of such a right requires that the deceased or at least one of their children is at the moment of death, a national of a Member State of the European Union or resides there habitually. In such a situation, the notary in charge of the settlement of a succession has a duty to individually inform each potential heir of their rights to challenge the different gifts and bequests made by the deceased that exceed the free portion available under French law.

This new text causes an issue with most common-law jurisdictions that do not know forced heirship rules. The new mechanism now questions the principles of choice of law and unity of the succession law applicable to the sharing-out of an estate under the European Regulation on Successions 650/2012 of 4 July 2012. Although the new law aims to protect heirs, its introduction may impact international successions in France by creating legal uncertainty with estate planning.

It is now more important than ever to review all international estate planning involving French assets.

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, salaries, savings and revenues from their own separate property.
- At the end of the contract (by death, divorce or change of system), each spouse 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 *préciput* clause, which provides 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 the joint assets to the surviving spouse

It should be noted that all these clauses, called marital benefits, even if they are intended to benefit a spouse, are not considered gifts from a civil law viewpoint (they cannot be challenged by the heirs) or from a tax viewpoint.

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

Separation of property

Each spouse 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 made by 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 any enrichment of 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 the 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

Two new EU regulations concerning matrimonial property regimes and civil partnerships were published on 24 June 2016: Council Regulation (EU) 2016/1103 and Council Regulation (EU) 2016/1104.

The Hague Convention no longer applies in France as from 29 January 2019, and as from that date, 17 other EU Member States will adopt the same new rules concerning conflict of laws and of jurisdiction with regard to matrimonial property regimes and civil partnerships. In terms of matrimonial property regimes, the EU regulation includes the main principles of the Hague Convention, but it does not include the automatic change of law described above.

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 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 may benefit from the tax advantages of French civil partnership legislation, under certain conditions.

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 law organizes succession by designating as heirs the surviving spouse, if any, and the members of the deceased's family, which it classifies according to four groups depending on how closely related they are to the deceased (descendants, mother and father with the brothers and sisters, grandparents, uncles and aunts with the cousins). If there are no members in the group most closely related to the deceased, then the next group in line becomes eligible.

The rights of the heirs to the succession are different depending on whether the deceased is survived by a 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 descendants, 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 descendants are entitled.
- If the deceased is survived by his or her spouse with no descendant 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 descendants, such descendants are entitled to the succession in equal shares.
- If the deceased is not survived by a descendant or by a spouse, the parents of the deceased as well as his or her siblings are all entitled to the estate.
- If the deceased does not leave any descendant, father or mother, brother or sister or their children, the surviving spouse inherits everything.

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 the absence of a tax treaty, when a French tax resident transfers any assets free of charge (*transmission à titre gratuit*), or when a beneficiary who is a French tax resident receives an inheritance or a gift, 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, FTC).

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

11.2 Double taxation treaties

France has concluded inheritance tax treaties with the following countries and territories:

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

France has concluded gift tax treaties with the following countries and territories:

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

France has concluded wealth tax treaties with the following jurisdictions:

- Albania, Algeria, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bolivia, Canada, Chile, Columbia, Cyprus, Czech Republic, Egypt, Estonia, Finland, Gabon, Georgia, Germany, Guinea, Hong Kong, Hungary, India, Indonesia, Israel, Italy, Ivory Coast, Kazakhstan, Kuwait, Latvia, Lithuania, Luxembourg, North Macedonia, Malta, Mauritius, Mongolia, Namibia, the Netherlands, Norway, Oman, Poland, Qatar, Quebec, Romania, Russia, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Ukraine, the United Arab Emirates, the United States, Uzbekistan, Vietnam and Zimbabwe.

France and Belgium signed a wealth tax treaty on November 2021. This agreement is still in the process of ratification and is not yet in force.

France has concluded amicable agreements on the situation of cross-border workers in the context of the COVID-19 pandemic:

- Belgium, Germany, Luxembourg, Italy and Switzerland