



**COUNTRY
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The Legal 500 Country Comparative Guides

France

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in France.

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FRANCE

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1. Which factors bring an individual within the scope of tax on income and capital gains?

Income tax is due by French tax residents.

Regardless of their nationality, individuals are deemed to be domiciled in France for tax purposes if:

- their household is in France;

Individuals have their household in France if they live there most of the time and permanently with their spouse (or civil partner and/or children) or alone.

- their main place of abode is in France;

The location of the main abode will be established based on the actual presence in France.

- they carry on a professional activity in France, salaried or not, unless this activity is secondary;

Individuals have a professional activity in France as a primary occupation if they devote most of their actual time to it.

- they have the centre of their economic interests in France.

An individual who has more income from French sources than income from foreign sources therefore has the centre of their economic interests in France.

These criteria are examined for each member of the household.

When an individual is a French resident for tax purposes, French tax applies on the worldwide income (subject to international tax treaties).

2. What are the taxes and rates of tax to which an individual is subject in respect of

income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

France applies taxes on all kind of income (salaries, pensions, rents, financial income, capital gains etc.).

Salaries and pensions are subject to a progressive tax rate from 0% to 45%, plus a surtax of 3% on the portion of income that exceeds EUR 250,000 euros for a single person and EUR 500,000 for a married couple, and of 4% for income that exceeds EUR 500,000 for a single person and EUR 1 million for a married couple.

Financial income, such as interest and dividends are subject to a single flat rate withholding tax (PFU) of 30%, made up of:

- 8% for income tax,
- 20% for social security contributions.

However, taxpayers may opt for taxation under the progressive income tax scale, in which case, a 40% allowance can apply on dividends.

Capital gains tax is also levied at a single rate of 30% (12.8% for income tax and 17.20% for social security contributions). This capital gains tax must be paid in the year following the sale.

Real estate capital gains are taxed at the rate of 19%, plus 17.20% for social security contributions.

The social security contributions on French income deriving from assets (rents, dividends, interests, capital gains etc.) is fully due. Non-French tax resident member of a compulsory social security scheme in a country of the EEA or Switzerland is taxable only at the rate of 7.5% on the French incomes.

The tax year starts on 1 January and ends on 31 December. Tax returns must in principle be submitted by the end of May or beginning of June of the following year depending on the region.

There is also an exit tax upon emigration.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Pensions and income from employment are subject to a withholding tax directly deducted from the salary by the employer or the pension fund. Each employer / pension fund must apply a withholding tax rate to the amounts they pay to each income beneficiary (wages, etc.). This tax rate is sent to them electronically by the French tax authorities (based on the tax situation of each beneficiary).

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

To avoid double taxation on income, France has concluded bilateral treaties with a large number of countries.

Today over 102 jurisdictions concluded negotiations on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). The MLI was signed by France on 7 June 2017 in Paris and the rules came into force on 1 July 2018.

Usually, France allows tax credit to avoid double taxation. Two scenarios apply, either the amount of the tax credit reflects the foreign tax, or the tax credit is equal to the amount of French tax corresponding to the foreign-source income.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is a real estate wealth tax (IFI) in France since January 1, 2018. This tax is paid by individuals or couples holding private real estate assets, not used for professional activity, and representing more than EUR 1,300,000. Gift tax is levied at progressive rate from 0.5% to 1.25% and is calculated in brackets starting at EUR 800,000.

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

The same factors trigger tax on gifts and inheritances.

French inheritance or gift tax liability is linked to the residency. Three main scenarios apply:

- When the deceased or the donor is a French tax resident, all assets transferred are taxable in France, whether they are located in France or outside France, and whether or not the heirs or legatees are French tax residents;
- When neither the deceased, or the donor, nor the beneficiary, is a French tax resident, only the assets located in France are subject to French transfer tax;
- When the heir, beneficiary, or legatee has been a tax resident in France for at least six of the last ten years before the transfer or the estate, all assets, whether they are located in France or outside France, are subject to transfer tax in France.

Gift or inheritance tax is levied at progressive rates from 5% to 45%, depending on the value of the gift or the estate, and kinship between the deceased / donor and the beneficiary.

The tax is calculated after deduction of the allowances in force, which also depend on the relationship between the deceased or the donor and the beneficiary.

When the deceased or donor has absolutely no family or marriage ties with the beneficiary, the transfer tax applies at a rate of 60% and there is no allowance.

The transfer of the estate must be filed to the tax authorities six months after the death if the deceased died in France, and one year after if he died abroad.

The beneficiary of a gift is liable for paying the gift tax, but the donor may pay the gift tax on behalf of the beneficiary. Gift tax is due within a month from the date of the donation. In the case of a gift by notarial deed, payment is made through the notary.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg

business or agricultural assets), and how do any such reliefs apply?

Spouses are exempt from inheritance tax in the event of the death of one of the spouses.

There is an allowance for gifts between spouses or civil partners.

Allowance of EUR 100,000 applies between parents and children every 15 years.

Subject to conditions, special rates apply to legacies of family businesses and companies.

Subject to conditions, gifts of family businesses and companies are eligible for tax relief.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

Gifts and legacies may be exempt from inheritance tax when they are made to a French charity, public foundation, or similar entity recognized as being in the public interest. Strict conditions must be fulfilled regarding the statute and the non-lucrative activity.

Subject to an agreement by the French authorities, EU charities and public foundations can benefit from the exemption.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

A real estate owner may fall into the scope of the French wealth tax when the fair market value of the real estate exceeds EUR 1,300,000 at January 1st of each year.

A real estate owner is also liable for local property taxes. These taxes are based on the cadastral value of the property. The rates of tax are set by the *région*, the *département* and the city and vary from one district to another.

When an individual sells a property in France, tax is levied on the capital gains (with a linear reduction of 6% from the 6th year). Exemption may apply when selling the main residence.

A progressive surcharge from 2% to 6% are added to gains over €50,000, calculated after the application of the holding period reduction.

Transfer tax is due on the purchase of French property. The tax ranges from 5.09 % up to 5.80 % depending on the region. Transfer tax is due by the purchaser.

10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

Gains from the sale of digital assets are subject to the same tax treatment as capital gains on financial income (see question 2) and are taxed at a global rate of 30%.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Art is taxed favorably in France.

Sales of precious metals, jewelry, works of art, collectors' items and antiques are subject to a flat-rate tax of 6%.

In addition, if the seller or exporter is domiciled in France for tax purposes, a social contribution, the so-called CRDS, at a rate of 0.5% applies. The overall tax rate is therefore 6.5%.

The tax is payable at the time of sale or final export.

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

The French impatriation scheme enables individuals newly tax resident in France to benefit from favorable income tax treatment.

The scheme applies to individuals who have been domiciled for tax purposes outside France for the five calendar years preceding the year in which they take up employment with the recruiting company based in France.

Impatriate employees will also benefit from a 50% exemption on foreign-source income from securities, certain intellectual property products and gains on the sale of securities.

The French impatriation scheme enables individuals

newly domiciled in France for tax purposes to benefit from favorable income tax treatment.

Regarding the real estate wealth tax (IFI), the impatriation scheme limits the tax base to real estate assets and rights located in France. This tax concession applies for 5 years.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Due to the complexity of the French tax system, individuals who intent to become a French tax resident or make any investment in France must be aware of the tax consequences to secure their situation, particularly in terms of wealth tax, inheritance or gift and ensure that the appropriate tax treatment applies to those who are tax residents outside France but who become linked to France for tax purposes.

14. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

If the deceased was married, the surviving spouse shares the estate with the deceased's children or parents. If there are no children or parents, the surviving spouse receive the entire estate.

Without spouse, the order of heirs is as follows:

- Children and their descendants, • The father and mother; brothers and sisters and their descendants, • Ascendants other than father and mother, • Collateral heirs other than brothers and sisters, and their descendants.

The forced heirship is as follow: • 1 child = half of the estate, • 2 children = 2/3 of the estate, • 3 or more children = 3/4 of the estate.

After the death, children may claim for their forced part if their rights are infringed.

If there are no children, the forced part of the surviving spouse is 1/4 of the estate.

15. Is there a special regime for matrimonial property or the property of a

civil partnership, and how does that regime affect succession?

Beside the legal matrimonial regime (of community of assets acquired during the marriage) and the contractual regime of separation of assets, spouses can choose the contractual regime of universal community, including a clause of full attribution, so that the surviving spouse will receive the entirety of their common assets.

The legal property regime for civil partners is the separation of property, and civil partnership doesn't give inheritance rights without a will. Partner can also choose a regime of join property, so that the surviving partner will receive half of the assets acquired during the partnership.

16. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

According to the REGULATION (EU) No 650/2012, the French law shall apply to the whole estate of the deceased who had his habitual residence in France at the time of his death, unless the circumstances show that the deceased had more close connections with another State, so that the law of this State should apply.

A French resident can also choose the law of his nationality (at the time of this choice or at the time of his death) to govern his succession.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

In such case, the French law would apply to all the assets owned by the deceased, wherever they are located.

However, on the assumption that the law of another State is applicable according to the UE regulation, a renvoi should be accepted provided that it refers to the law of a Member State of EU or the law of a third State which would apply its own law to the succession.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having

made a Will, and what are the formal requirements for making a Will?

A will allows a person to benefit an heir or a third party for all or part of his estate, or to arrange the distribution of his assets to avoid undivided inheritance, especially with an universal legacy.

There are three types of will: holographic will (handwritten, dated and signed by the testator), authentic will (with a notary and two witnesses) and mystic will (which is a secret will be filed by the notary with two witnesses).

If a person dies without a will, the estate is transferred according to the legal order of heirs.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

All heirs can take possession of the estate immediately upon death and may appoint a mandatary to administer the estate.

The deceased can also appoint a person by mandate with posthumous effect to administer all or part of his or her future estate.

In case of conflict, a judicial mandatary can be appointed by the judge under certain conditions.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

France does not allow to create a trust, partnership or any other similar entity under French law, those legal structure being not recognized. However, France introduced a special tax regime and reporting obligations applicable to non-French trusts or partnerships and similar entities. In any case, from a French tax standpoint a foreign trust or similar structure offers no fiscal advantages in inheritance law or any other form of taxation.

The trust may be of major interest in the presence of a so-called "vulnerable" person, by virtue of their age,

disability, or illness, who would like to have their property managed by a trusted third party. The "grantor" of the trust can designate himself as the "beneficiary".

France introduced the so-called « fiducie » which is inspired by the Anglo-Saxon trust. However, the fiducie cannot be used as a liberality.

Family companies can be set up in France through legal corporate structures. A société civile immobilière is the most commonly used corporate form to hold real estate and make family investment.

21. How are these structures constituted and what are the main rules that govern them?

The constitution of a fiducie gives rise to a registration measure on a trust register held by the Tax Department.

The fiducie contract must be concluded in writing, sometimes even by notarial deed, on pain of nullity if it relates to property between spouses. The fiducie contract must be registered within one month at the tax office of the fiduciary. When it relates to real estate or real property rights, it must be published at the mortgage office of the place where the real estate is located.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

French reporting obligations are applicable where a trust has a connection with France. This will be the case when the settlor, trustee, or the trust's beneficiaries are French resident, or when the trust owns French assets.

Trustees are required to declare any creation, modification, and revocation of a trust within 30 days.

By 15 June each year the trustees must declare the market value of the trust assets as at 1 January.

The assets to be declared will be the worldwide assets of the trust if the settlor or a beneficiary is French resident. Otherwise, the declaration is limited to assets situated in France.

Failure to declare will result in a EUR 20,000 penalty. There is also a penalty of 80% of the tax avoided in respect of trust assets not duly reported.

There is no confidentiality. Ultimate beneficiary and assets must be declared to the French tax authorities.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

A fixed levy of 1.5% is due each year on all the trust, or any similar entity, assets. The trustee, settlor and all beneficiaries are jointly liable for this tax.

The fixed levy is avoided if:

- all the relevant trust assets are included in the Wealth tax (IFI) declaration(s) of the settlor and/or beneficiary, - or all the relevant trust assets have been correctly declared on the above trust form (see question 22) but neither settlor nor beneficiaries are subject to IFI.

Income from a trust received by a French resident is taxed as foreign financial income whatever the true underlying nature of the assets.

French gift and inheritance taxes arise on the death of the settlor if:

- The settlors is French resident at the time of death ; or
- Any trust assets are located in France.

24. Are foreign trusts, private foundations, etc recognised?

The trust, or any similar foreign entity, is ignored by French law. However, when it is constituted abroad, it can produce effects in France (see questions above). Foreign trusts, and similar entities, have been recognized in France for tax purposes.

25. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

French beneficiaries of trusts set up abroad are subject to tax when receiving income from the trusts, and when receiving the assets upon the death of the settlor.

French tax resident trustees are also subject to French tax if they receive a salary from the trust.

26. To what extent can trusts, private foundations, etc be used to shelter assets

from the creditors of a settlor or beneficiary of the structure?

A security trust, the French so-called Fiducie-sûreté, is a transaction whereby a settlor transfers, as security for a debt, assets, rights, or security interests of which he is the owner, into a special-purpose asset managed by a fiduciary.

As soon as the transfer is made and for the duration of the contract, the settlor denies all rights to the transferred assets in favour of the fiduciary, who must keep them separate from his personal assets and manage them on behalf of the beneficiary of the fiducie.

Once the debt has been repaid in accordance with the agreed terms, an asset placed in fiducie automatically reverts to the settlor's patrimony. If the debt is not paid within the agreed deadline, the creditor can seize the asset for his own enjoyment, or to dispose of it and be repaid from the fiducie assets.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

Beside the legal administration of the assets of the minor children by his parents, a guardian can be appointed by them by will to manage these assets.

Every person can also give a mandate with posthumous effect to manage all or part of his assets after his death, in the interest of the heirs, specifically when they are minors, for a limited time.

Also, every person can include in a will or a donation to a minor a specific condition of the management of the transferred assets by a third person, who is not subject to legal administration, during the minority of the beneficiary.

The last two mechanisms are useful for managing shares of a familial company during the minority of the heirs.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

A person can give a mandate to one or more people to represent him in the event he could no longer see to his own interests alone.

This mandate can cover either the assistance in the personal life of the principal, either the management of all or part of his assets, either both matters.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

There are two main forms of charitable company under the French law: endowment funds, the so-called fonds de dotation and foundations.

The incorporation of a Foundation recognized to be of public interest is subject to a complex procedure involving the Ministry of the Interior and the Conseil d'État, and requires a minimum capital of EUR 1.5 million.

In addition to a 66% reduction on income tax on the amount of the donation (within the limit of 20% of the taxable income), the donor is entitled to a 75% reduction in real-estate wealth tax (IFI) on the amount of the donation, up to a limit of 50.000 euros (only for donation to a foundation recognized to be of public interest), and a 60% reduction in corporation tax.

The incorporation of an endowment fund is more flexible: it can be set up by one or more individuals or companies by registering the by-laws with the relevant

prefecture.

The same reduction on income tax (66 %) is granted to individual donors, and companies are entitled to a reduction on income tax or corporate tax of 60% of the amount of the donation (within the limit of 5 % of annual turnover).

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

For automatic exchange of information on financial accounts purposes, an individual will accordingly be a French tax resident if his/her income are taxed in France.

France is one of the most proactive countries by using the treaty provisions on Automatic Exchange of Information in Tax Matters.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

A new bilateral treaty with Belgium has been signed and could enter into force as from 2024. The tax burden on French dividends will increase. Upon conditions, capital gains realized by a Belgian tax resident on shares of a French company will become taxable in France.

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