

## Options for Owning Property in France

British testators must be aware that any property that they own in France will be subject to French succession rules and to French IHT upon their death.

Even if there is a British will, the strict succession rules in France will apply to any property in France. Furthermore under SI 1963/1319, which implements a convention between France and the United Kingdom on preventing double inheritance taxation, a UK domiciled testator will be subject to French IHT on any French property. The UK IHT which would normally be chargeable against a foreign part of the death estate will have credited against it the French IHT charged, with the result that only the French tax will be payable against the property.

This situation can cause difficulties for British testators, especially in terms of the French succession regime. In particular, a married couple cannot automatically leave their property to each other as they could in England. However, it is possible for a British couple to manage their ownership of French property so as to ensure that the situation upon death is optimal.

### Default position

A couple married in England is in France considered to be married under the regime of *séparation des biens*. This means that assets registered in the name of one spouse only are considered to be owned by that spouse only, and assets registered in joint names are considered to be owned equally. Jointly owned property will by default be deemed to be held *en division*, with each spouse owning their own half (or other percentage) of the property which on death will devolve according to French succession law.

Succession law focuses on the concept of bloodline, protecting the rights of children, grandchildren, and even parents, before the rights of the spouse. Protected heirs are entitled to a reserved portion of the estate; where there is one child of a marriage they will be entitled to a reserved portion of  $\frac{1}{2}$  of the estate, where 2 children  $\frac{2}{3}$  of the estate, and where 3 or more children  $\frac{3}{4}$  of the estate. Even a valid French will cannot override these rights of protected heirs, although it can enable a testator to make his wishes clear with regard to the remaining disposable portion of his estate.

Relying upon this default position could be appropriate where there is a relatively simple family situation, as it may in any case reflect the testators wishes, and would allow for children to take advantage of IHT exemptions on the death of each of their parents. However where the family situation is more complicated, and particularly where there are children from past marriages, the default position may not reflect the deceased's wishes as to the distribution of French property. Furthermore, the surviving spouse is left in a precarious position as to residence in or use of the property, as where there is ownership *en division*, any person owning a part share can force a sale on the other part owners or can ask to be bought out.

### Change to the Marital Regime

A couple married in Britain have the option of changing their marital regime from the default position that divides all jointly owned property equally between them, to one that says that all assets belonging to the couple are under joint or community ownership, *communauté universelle*.

The advantage of this type of ownership is that it allows all the property to pass to the surviving spouse on the first death, free of IHT.

However, it should be noted that the rights of children of a previous marriage will still take effect even with this regime implemented. Furthermore, there can be adverse tax consequences as a result of this regime as any children of the marriage will not benefit from the maximum IHT exemptions available to them.

### **Change to the Manner of Joint Ownership**

At the time of purchase, property can be declared to be held *en tontine*. Where this is the case, upon the first death the survivor will take the whole property, having been declared to have owned the whole from the outset. In this way French succession rules are completely avoided.

This manner of ownership can however be tax inefficient as the only tax exemption available will be that of the spouse. If the property is subsequently passed on to any children then they will have missed out on their maximum available IHT exemptions. Furthermore, the consent of both parties must be obtained before the property can be sold, mortgaged or otherwise disposed of, and this can cause problems in the event of a marital breakdown or divorce.

### **Ownership through a Company**

If a property is brought by a *société civile immobilière* of which a married couple are the shareholders, the couple do not own the house, but only the shares in the company. Upon death, it is the ownership of the shares that will change, not the ownership of the property. As shares are considered to be personal property rather than real property it is the law of succession in the country of domicile that will be applied, therefore allowing the property to pass according to an English will.

Use of a *société civile immobilière* for property ownership is not uncommon in France, and as it is fiscally transparent is not subject to corporation and capital gains taxes in the way that a UK incorporated company would be. However this is a relatively complicated way in which to achieve ownership of property, and IHT is still chargeable upon death of a shareholder.

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This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead it is intended to act as an introductory view of some of the legal considerations relevant to the subject in question.