French Property Briefing

Supporting your investment in French real estate

Moore Stephens Monaco provides specialist assistance for foreign investment in French real estate. We set out below some of the key issues for investors.

An estate agent can assist with sourcing and viewing of properties. The estate agency profession is strictly regulated in France and both professional experience and financial guarantees are required by law. The agent will normally charge a commission of 5% plus VAT of the purchase price. The commission is payable by the vendor, but sometimes it can be agreed that the commission is paid by the purchaser and we can discuss the impact of this for the buyer. We can review any estate agency mandate or purchase offer that the agent may submit to you for signature.

Conveyance procedure

A notary will deal with the drafting of the contract and various pre-sale searches. The notary is responsible for transferring good title to you. Moore Stephens works closely with different notaries. We can advise you at each step of the acquisition process, including:

- Advice on the terms of a preliminary contract;
- Review of legal documentation and sale deed.

Structuring

We can propose different property holding structures depending on the issues that are relevant to you. The main tax and civil law implications are summarised below and our international tax specialists can advise on an appropriate structure suiting your individual circumstances.

Civil law consequences

It is important to establish which law applies on death and what the French inheritance rules mean for you and your family should they apply.

> "Estate planning using a Monaco SCP and wills can be considered to ensure that your wishes are respected on death."

France has adopted the EU Succession Regulation which allows you to choose by Will your national law to apply to the French succession. By default the French notary will apply the law of the deceased's last place of habitual residence to the devolution of the estate (both movable and immovable assets). However, a recent French law has given rise to some uncertainty as it can result in the application of forced heirship rules even in situations where a foreign law has validly been appointed by will. The question of the law's conformity with EU rules is being debated.

Estate planning using corporate structures and wills, in particular, may be considered to ensure that your wishes are respected on death.

Société Civile Particulière ("SCP") The use of a so called "société civile"may be advantageous for holding real estate in France. It offers flexibility in that you own shares rather than real estate. It gives a structured framework for management which is appreciated when ownership is split between family members. A Monaco SCP may offer an inheritance tax advantage for nonresidents of France in some circumstances and is a well recognized entity in France.

Taxation

Appropriate tax treaty provisions need to be taken into account and the potential consequences of your investment in your home country need to be considered. As a member firm of the Moore Global network, we have access to tax specialists in most countries.

The following taxes should be considered when you invest in French residential property:

1. Real estate wealth tax

Real Estate Wealth tax applies in France to individuals when the net value of their real estate assets exceeds a threshold of currently EUR 1,300,000. For non-French residents real estate in France and shares in companies with real estate in France are taken into account.

Properties which have a commercial or business use are exempt whether held by an individual or by a company.

Debt linked to the real estate is generally deductible when calculating the net value of the assets. However, certain restrictions apply and it is important to review the loan situation in relation to your French real estate to establish whether the loan is deductible and to what extent.

We can assist you in determining which real estate assets will be taken into account whether debt can be deducted.

2. Income tax or corporation tax on rental income

Property rentals are subject to French income tax. Currently rental income is taxed at the French progressive rates with a minimum rate of 20% applying to non-residents and an upper rate of 45 %. An additional levy of 7.5% or 17.2% applies covering social charges (see point 4 below).

If the property is owned by a company rather than in individual name, then corporation tax may apply to the rental income. If the company is a tax transparent entity such as an SCI, then tax will be assessed at the shareholder level – if the shareholder is a corporation then corporation tax applies, if the shareholder is an individual, then the individual income tax regime applies.

3. Capital gains tax

A flat rate of 19% applies to the capital gain on sale of French real estate. An additional tax applies when the taxable gain reaches certain levels. This additional tax is progressive and is added to the flat rate of 19% and ranges from 2% for gains greater than EUR 50,000 to 6% for gains above EUR 250,000. A general allowance exists based on the duration of the ownership. Total exemption of capital gains tax is achieved after 22 years of ownership.

An additional levy of 17.2% applies covering social charges (see point 4 below). Again, an allowance applies based on time of ownership with total exemption after 30 years.

4. Social security charges

Since 2012 France has applied a social security tax (CSG/CRDS) in addition to rental income tax and capital gains tax on the sale of real estate by non-residents.

The CSG/CRDS levy for non-residents has been subject to challenges before the EU Court of Justice and has gone through some modifications since its first application in 2012.

Under current rules, a reduced levy (Prélèvement de Solidarité) of 7.5% applies to EU, EEA, and Swiss residents who are affiliated to a social security system in their state of residence.

The French tax administration has recently confirmed that British residents can also benefit from the reduced social security tax despite Brexit. This stems from the withdrawal agreements of 12 November 2019 and 30 December 2020.

For all other non-residents (including Monaco residents) the full CSG/CRDS/Prélèvement de Solidarity levy continues to apply at a global rate of 17.2 % in addition to rental income tax and capital gains tax.

5. Fiscal representation for non-residents

Residents of an EU country or Iceland and Norway do not need to appoint a fiscal representative on the sale of real estate.

However, the fiscal representative obligation remains for those residents in non-EU countries including Monaco and the UK.

6. 3% tax:

An annual 3% tax on the value of the property applies in certain circumstances for corporate entities owning real estate in France.

The purpose of the 3% tax is to enable the French tax administration to be informed of the identity of the ultimate beneficial owner of French real estate, in situations where such individuals may be subject to French wealth/inheritance or gift tax. However, French companies and certain companies with its registered office in a country that has signed an appropriate double taxation treaty with France, may be exempt from the 3% tax, provided they disclose every year the identity and address of all of the shareholders/beneficial owners of the entity.

7. Inheritance tax and gift tax

Under French internal rules real estate is subject to inheritance tax. The shares of a property-owning company would be assimilated to "real estate" for these purposes.

The rates will vary depending on the relationship between the deceased and the heir. In direct line, each heir benefits from an allowance of EUR 100,000. Thereafter, tax applies at rates ranging from 5% to 45%. Between siblings the rates range from 35% to 45% and between non-related parties a flat rate of 60% applies. Spouse exemption applies on death, but lifetime gifts between spouses are taxed at rates ranging from 5% to 45% with an allowance of EUR 80,724.

How can we help?

With a broad range of services and skills (legal, tax, accounting, secretarial and administrative services) Moore Stephens supports your French Property investment.

- Setting up of foreign corporate structures, SCPs and provision of the registered office.
- Company administrative and accounting services.
- Filing income tax and wealth tax returns for individual shareholders or property owners.
- Assistance with preparation of annual accounts and completion of tax returns.
- Back-office support for renovation or building projects: For example, we follow up on architect's reports and schedules of payment and we match your agreed quotes with payment demands and invoices.
- Household staff administration. We can prepare salary slips, draft employment contracts and deal with on-going household staff matters.

We have an international team covering various languages, including English, French, Russian, Italian and Chinese.

For more information, please contact:

Birgitta Bondonno – Director
Birgitta.Bondonno@moorestephens-mc.com

Patricia Osborne – Managing Director
Patricia.Osborne@moorestephens-mc.com

Moore Stephens Services SAM
L'Estoril, 31 Avenue Princesse Grace
MC – 98000, Monaco
Telephone: (+377) 93.10.41.21

www.moorestephensmonaco.com

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