



**MONCEAU CPA
ONLINE
WEBINAR EDITION**

INHERITANCE & DONATIONS

**November
3rd 2022**

Disclaimer



The information contained in this presentation is intended only for the personal and confidential use of the recipients of this webinar. The information presented in this presentation is for general guidance only. It is essential to look and take advice from a professional given your specific situation. No liability can be accepted for any errors or omission or for any person acting or refraining from acting on the information provided in this presentation. This presentation covers general concepts of certain French and U.S. laws. Nothing herein shall be deemed legal, tax or accounting advice.

If the reader of this message is not the intended recipient or an agent responsible for transmitting it to the intended recipient, you are informed that you have received this document in error and that any revision, distribution, distribution or copy of this message is strictly prohibited. If you received this communication in error, please notify us immediately by email and delete the original message. French laws and courts have sole jurisdiction for any claim, dispute or difference concerning the content of this communication.

About Monceau CPA

Monceau CPA is an international accounting firm located in the heart of Paris with additional offices worldwide. Monceau CPA firm assists its clients in all stages of setting up and managing a business, but also in all matters related to individuals taxation in France and abroad.

© 2022 Monceau CPA



64, rue de Monceau
75008 PARIS



01 88 33 42 22



info@monceaucpa.com



www.monceaucpa.com



Isaac Barchichat

Partner Monceau CPA
FR/US/CA accounting/tax firm

- CPA in France, in Canada and in the U.S.A.
- International Financial and Accounting Expert with a focus on US GAAP, French GAAP and IFRS
- Graduated in the United States and in France
- Combined experience of 15 years in large accounting firms and large companies
- Certified sworn-in translator
- US Notary Public
- Deputy Mayor of Saint-Brice-sous-Forêt (95)



INDEX

- 01 Introduction to the French income tax system**
- 02 Residing in France with worldwide assets:
Giving & receiving**
- 03 Residing abroad with French assets:
Giving & receiving**
- 04 Setting up a will in France**
- 05 Having a Trust in France**
- 06 About Monceau CPA**
- 07 Q&A**
- 08 Sources**

A background image showing a close-up of several hands of different skin tones being held together in a supportive grip. The image is slightly blurred, focusing on the hands in the foreground.

1. Introduction to the French income tax system

Understanding the basics

What Makes You a French Fiscal Resident ?



6 Months

More than 183 days in the calendar year (Jan-Dec)



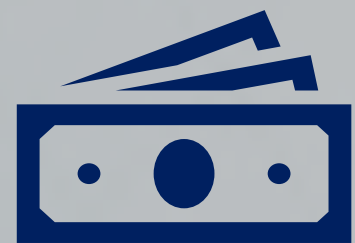
Travel

More time spent in France than in any other country



Professional Activity

You exercise your principal professional activity in France



Economic Interest

Your main economic interests are located in France (business HQ, investments, etc.)



Primary Residence

Main home located in France



Family

Members of your household live in France

French Tax Liability

7



Resident

- Entire household (*quotient familiale*)
- Income tax on worldwide income
- Worldwide bank accounts disclosures (*very important*)
- Occupancy tax (*taxe foncière*)
- Property tax (*taxe d'habitation*)
- Wealth tax
(*IFI impot sur le fortune immobilière ex-ISF*)



Non-Resident

- Income tax on French income only
- Property tax
- Occupancy tax
- Wealth tax



Double Taxation Treaty

(125 countries)

A tax treaty (also double taxation treaty; in English, double taxation treaty or DTT) is a treaty between two countries aimed at avoiding double taxation of persons and companies.

It defines how the tax residence, i.e., the place of taxation, is determined so that the citizen or the company of a country residing in another country is not taxed once in each country for the same income.

France



Other Country

Covers:

- Personal income tax
- Corporate income tax
- Social contributions
- Capital gains

Doesn't Cover:

- Inheritance (*complex tax rules*)
- Wealth tax (*exempt first 5 years upon arrival in France on foreign assets*)

Introduction to Inheritance & Donations in France

It happens more and more frequently that the notary must settle inheritances involving people of several nationalities, or assets distributed in several states. We speak of international succession when there is a foreign element, a foreign element, either because one of the heirs is a foreigner, or because the inheritance assets are located outside France, abroad.

Legal problems of succession after the death of a loved one are now very recurrent. To remedy this, some individuals opt for donation. Indeed, the latter allows the donor to bequeath his property and heritage during his lifetime to any person of his choice. It is very popular because it has several tax advantages.

Inheritance

The "Succession" also known as "estate patrimony, is the name given to all the property, rights and actions which belonged to the deceased on the date of his death and whose various elements composing it, belong to the persons called upon to inherit.

The "law of succession" governs the relationship between his heirs and the relationship that, in this capacity, they have with third parties. The word also designates the legal mechanism by which both active and passive the transfer of these rights from the patrimony of the deceased to that of those who inherit.

Donation

A donation is an act by which you transfer, during your lifetime and free of charge, the ownership of a property to another person.

You can donate to the person of your choice. However, the goods donated must not exceed the share reserved for some of your heirs. The donation can be made freely or obligatorily before a notary in certain cases. Barring exceptions, you cannot cancel a donation.

If you donate, you must declare it to the tax authorities within 30 days. The declaration must be done by the one receiving the donation.



2 Residing in France with worldwide assets

Giving & receiving

French resident



The deceased was a French resident

All inherited movable or immovable assets, located in France or elsewhere, are taxable in France. This applies irrespective of your domicile (inside or outside France) when the inheritance was transferred.

If you are resident of France for tax purposes on the date of the transfer and were also resident for at least six of the ten years prior to this date, then you owe taxes on transfers without valuable consideration on the movable or immovable assets which are in France or outside France that you inherit.

Taxable assets include public funds, ownership interests, the assets or rights constituting a trust and, more broadly, all French and foreign securities of any nature whatsoever.

Regulation (IE) n° 650/2012 of 7/4/12, known as the succession regulation, authorizes anyone to choose their national law to govern their succession – i.e. A US citizen can elect to have his succession dictated by U.S. civil law – nothing changes however for the tax application – country of residence.

Inheritance



The deceased's income

If the deceased received French-source income during the year of his/her death (N), income tax return no. 2042 must be filed in May or June of year N+1. This return will cover the deceased's income from 1 January of year N up to the date of his/her death.

If the deceased was married or in a PACS (civil union): two returns must be filed in year N+1:

- a return for the couple from 1 January of year N up to the date of death &
- a return for the surviving spouse as from the date of death up to 31 December of year N.

An inheritance declaration (forms 2705, 2750-S and 2706) must be filed:

- within six months of the date of death if this occurs in France
- within twelve months in other cases

Inheritance tax

IMPORTANT: the surviving spouse or PACS partner is exempt from inheritance tax.

As the brother or sister of the deceased, you also benefit from an exemption from inheritance tax if you meet the following 3 conditions:

- you are single, widowed, divorced or separated at the time of death;
- you are over 50 or disabled at the time of death;
- you were constantly domiciled with the deceased during the 5 years preceding the death.

Taxable portion	% applied
The heirs in the direct line	
Not exceeding 8 072 €	5%
Between 8 072 € and 12 109 €	10%
Between 12 109 € and 15 932 €	15%
Between 15 932 € and 552 324 €	20%
Between 552 324 € and 902 838 €	30%
Between 902 838 € and 1 805 677 €	40%
Above 1 805 677 €	45%
Brothers & sisters	
Not exceeding 24 430 €	35%
Above 24 430 €	45%
Parents up to the 4th degree (included)	
Standard rate	55%
The other heirs	
Standard rate	60%

Source: <https://www.impots.gouv.fr/particuliers/questions/comment-dois-je-calculer-les-droits-de-succession>

It's not mandatory to file an inheritance declaration when the estate's gross assets is less than:

- o €50,000 for a transfer to direct heirs, the surviving spouse & partner under a PACS
- o €3,000 for other heirs

For all other cases, you must file a declaration either way !



Who can give and to whom ?

The donor can give his patrimony to any beneficiary. It will be the donee's turn to pay the fees and donation duties. It should be noted that the taxation of the donation varies according to the family ties between the donee and the donor. For a donation towards his parents, his children, his grandchildren, his nephews or his nieces, the advantages are enormous.



15-year rule

These allowances relate to donations made by the same donor to the same donee over a period of 15 years.

Example: a child can receive €200,000 (100,000 x 2) from his parents and €127,460 (31,865 x 4) from his four grandparents every 15 years without gift tax to be paid. The donation can be made in one or more instalments.

Obligation to declare



Related forms must be filled out to declare any donations made by the recipient of the donation. This declaration must be submitted to the local recipient tax department within 30 days.

Limit of 131,865€ for donation made before the age of 80 years old. Past that age, you will be limited to 100 000€ every 15 years.

Relationship	Allowance
in direct line (living or represented children or ascendants)	100 000 €
for the benefit of a small child	31 865 €
for the benefit of a great grandchild	5 310 €
for the benefit of a disabled person	159 325 €
for the benefit of a spouse or PACS partner	80 724 €
for the benefit of a brother or sister	15 932 €
for the benefit of a nephew or niece	7 967 €

Deductions are determined by the relationship between the donor and the donee.

Source: <https://www.impots.gouv.fr/particuliers/calcul-et-paiement-des-droits>



3. Residing abroad with French assets

Giving & receiving

Non-French resident



The deceased was NOT a French resident

If you are not resident of France for tax purposes on the date when the inheritance is transferred or were not resident for at least six of the ten years prior to this date, then you owe taxes on transfers without valuable consideration on the movable or immovable assets which you inherit, and which are in France. This applies whether you own the assets directly or indirectly and taxable assets include public funds, ownership interests, the assets or rights constituting a trust, French receivables and securities.

Inheritance tax will have to be paid to France when:

- The deceased is a tax resident in France;
- The heir is tax resident in France;
- The transferred movable or immovable property is in France.



Inheritance tax in France

Are subject to inheritance tax:

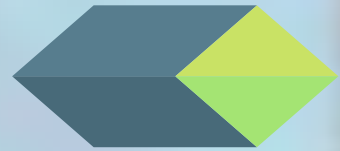
- Movable and immovable property, owned directly or indirectly, located in France, when the deceased does not have his tax domicile in France. Property located in France is taxable in France for inheritance tax even if its owner was a non-resident.
- Movable and immovable property located in France or outside France, received by the heir or legatee who has his tax domicile in France. However, this provision only applies when the heir has had his tax domicile in France for at least six years during the last ten years preceding that during which he receives the property. Thus, when the heir of an international succession is a tax resident in France, the entire estate received by the latter is subject to French inheritance tax.



4.

Setting up a will in France

When & How



Advantages & disadvantages of a French will

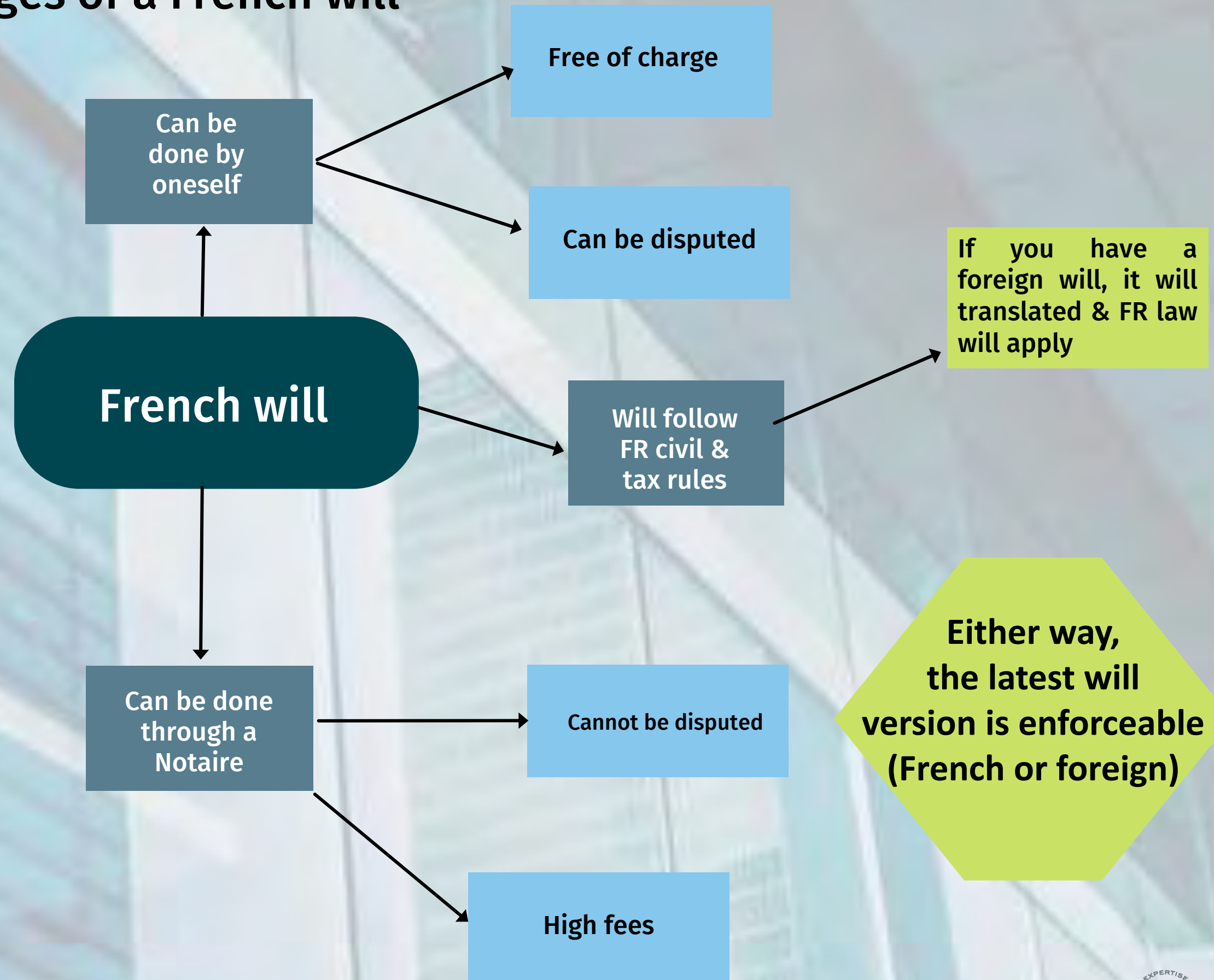
According to article 895 of the Civil Code: “the will is an act by which the testator disposes, for the time when he no longer exists, of all or part of his property or his rights and which he can revoke.”

Making a will makes it possible to organize the distribution of the testator's property in advance, so that he can prepare his estate.

It is a written document, which has real legal value. It allows you to designate a person responsible for enforcing your wishes, assigning your property to beneficiaries, and organizing your funeral. (organ donation, mode of burial). It also allows you to appoint a guardian if your children are minors.



If you do not plan your inheritance, it is the French law by default that will organize the division of your property according to a determined order.





5 • Having a Trust in France

Trustee & Beneficiary

French definition of a trust

Article 792-0 bis. of the General Tax Code (CGI) defines a trust as all the legal relationships created under the law of a State other than France, by a person who has the quality of settlor, by *act inter vivos* (alive) or because of death, with a view to placing property or rights therein, under the control of an administrator, in the interest of one or more beneficiaries or for the achievement of a specific objective.



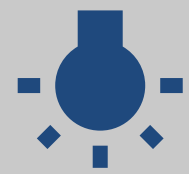
France doesn't have trust laws; it's treated a Trust as if it was a normal donation to the beneficiary. The proceeds of trusts are taxed with income tax, when they are distributed to the beneficiaries.

Subject to international tax conventions, all transfers made free of charge via a trust are subject to transfer duties free of charge (droits de mutations) whether they can be qualified as gift or inheritance about common law tax rules.



If the trustee or the beneficiary is domiciled outside France, duties are due either on all the assets or rights within the trust, regardless of their situation (if the beneficiary of the trust is domiciled in France on the day of the transmission and has been so for at least six years during the last ten years), or solely on the assets or within the trust, located in France.

Declaring your trust in France



Obligation to file

The cornerstone of the French tax system for trusts is reporting by the trustee or the beneficiary of the existence of a trust subject to the law to the French tax authorities. This reporting is mandatory and must be done following a certain process. Failure to submit a return can be subject to a penalty of 20 000€.



Type of declaration

Following article 1649 AB of the CGI, two declarations must be submitted:

- an “event-driven” statement regarding the constitution, modification, termination and content of the terms of the trust;
- an annual statement of the market value on January 1 of the year of the assets and rights placed in the trust and their capitalized proceeds.



Timeline

If you have a trust (administrator or beneficiary) you are required to make a specific declaration, namely form 2181, which must be sent to the tax authorities no later than June 15. This declaration must be filed at the following address :

Recette des Non-Résidents
10 rue du Centre
TSA 50014
93465 NOISY LE GRAND CEDEX



IFI wealth tax

Wealth Tax (IFI) is applied to real estate placed in a trust is included in the assets of the trustee or of the beneficiary deemed to be a settlor unless the settlor can prove that the property does not confer no contributory capacity.

It is possible to be exempted if the administrator is subject to the law of a State or territory that has concluded an administrative assistance agreement with France with a view to combating fraud and tax evasion.



6 • About Monceau CPA

Your international accounting firm



Monceau CPA

Certified Public Accountant
Expert-comptable &
Commissaire aux comptes



Isaac Barchichat

Associé / Partner

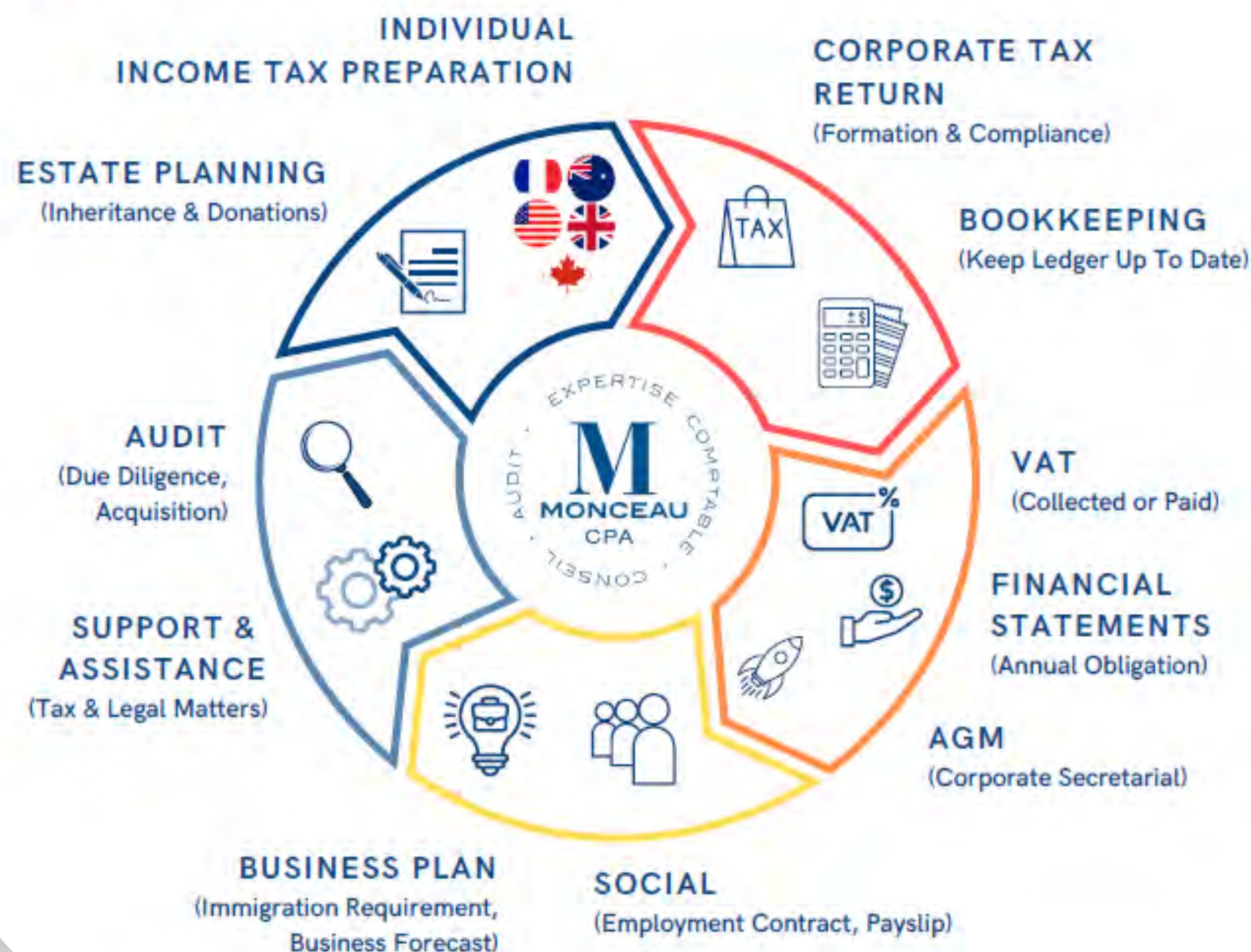
📞 01 88 33 42 22 📱 06 24 96 21 02

✉️ isaac@monceaucpa.com

🌐 www.monceaucpa.com

📍 64 Rue de Monceau - 75008 Paris
5 avenue du 8 mai 1945 - 95200 Sarcelles

Our services



7. Q & A

Q&A sent before this session

Q&A

1- If one owns property in France and has no children, are there ways to pass on that property to grand-niece or -nephew, say, instead of siblings? What would the tax burdens be for the beneficiary

2 - my husband and I have owned a house in France for 5 years now. We have two grown children and a regular Will in the States. I'd love to know how the property transaction flows from house owners to their non-French children upon, um, death. Thank you; such a timely question!

3 - I'd love to get clear direction on how to legally structure any documents here in France so that my USA trust and will are followed in terms of disbursement and how to protect as much as possible my US assets from French inheritance tax. E.G begin 'gifting' in advance?

4 - My partner and I are looking to buy a home in France. We are both 65 and hoping to somehow leave the property to the other if one of us dies and to his youngest son when we both die. Can that be accomplished with an SCI? What would the tax implications be?

5 - Can I buy a property in France and from the start put my child on the deed as co-owner ?

6 - For US citizens with a will in place for assets held in the US, what do we need to provide for here in France ref assets held in France. **We're** preparing to see the Notaire and studying up!

7 - I'd like to understand the tax pros and cons of buying a home as a married couple with adult children.

8 - Inheritance tax on French real property if inheritor is US resident & citizen (sole child) .VS Inheritance tax on French real property if inheritor is USA living trust.

9 - My sister and I would like to purchase a home together. I remember reading a few years ago that if siblings lived in the home together, perhaps it was 5 years, **there's** less inheritance due. True? There are no children or husbands

10 - My husband and I own property in France and currently our fiscal residence is in The USA; our married children are residing in the USA. What should we do in order to prepare for and protect our assets

11 - Is there any way of avoiding or reducing the 60% inheritance tax that applies if you are a French tax resident and have neither spouse nor children? Are charitable organizations in the US subject to the full 60% tax on the amount bequeathed to them under a will or trust? Are Charitable Remainder Trusts or other irrevocable trusts also disregarded by French tax law in the same manner as revocable trusts? Are REITs considered investments in real property for purposes of the US-France estate tax treaty? Aside from disregarding a trust, is there any additional downside in France to retaining a trust for disposition of assets to US beneficiaries, given that a trust avoids probate in the US and therefore serves a purpose under US law?

12 - If my partner is French and I am American, what does that do to my US trust, real estate, and my part of the real estate here in France, especially since he has French children and I have an American child? Also, what about gifting \$15k per year to individuals in the USA? Does that affect anything in France? My taxes are paid in the USA- I have no taxable French income.

13 - I am not married to my French boyfriend partner, but he would very much like to marry. Would a prenuptial agreement be accepted in France ? Would this protect my assets for my kids? I **don't** really want my assets to go to his kids nor to be subject to inheritance tax in France...

14 - If we are residents of France but still US citizens and inherit money and property from parent in US what are legal tax liabilities to France?

15 - I thought I remember hearing or reading that France **doesn't** recognize or allow trusts. Am I mistaken?

16 - I've just been named in a living trust in the US. I am a French resident. Are there any accepted workarounds to avoid paying the 60% inheritance tax? Is the 60% from the first cent or is there an allowance? Could I renounce my half and give it to my brother (London-based, where trusts are recognized, with no tax to pay on his half) to 'look after for me' and buy me presents with, e.g., a property in my name?

17 - We have a revocable trust in the U.S. We are thinking of making it an irrevocable trust before retiring in France. We are American citizens and so are my husband's three young adult sons, who live in the U.S. How would either a revocable or irrevocable trust based in the U.S. and inherited by U.S. citizens be treated by French authorities, especially if we invoke American inheritance law? All of the cash/investment assets will remain in the U.S.

A group of diverse elderly people, including men and women of various ethnicities, are gathered around a device, looking at the screen with interest and joy. The image is slightly blurred, emphasizing the people over the device.

8. Sources

Most relevant weblinks

Sources

- ❑ <https://www.capital.fr/votre-argent/succession-internationale-1356761#:~:text=Succession%20internationale%20%3A%20fiscalit%C3%A9,paie%20des%20droits%20de%20succession.>
- ❑ <https://www.service-public.fr/particuliers/vosdroits/F1270#:~:text=Tous%20les%20enfants%20ont%20les,droits%20de%20l'%C3%A9poux%20survivant>
- ❑ <https://avocat-droit-succession-cahen.fr/apres/un-non-resident-en-france-peut-il-heriter-en-france/>
- ❑ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042908474/
- ❑ <https://momanddadmoney.com/3-reasons-to-set-up-a-living-trust/>
- ❑ <https://www.leblogpatrimoine.com/impot/quels-droits-de-succession-pour-les-non-residents-comment-sont-ils-calculés-qui-est-imposable-en-france.html>
- ❑ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037526690/
- ❑ <https://www.french-property.com/guides/france/finance-taxation/inheritance/taxes>

Contact us for any questions

Thank you !

A live replay link of this seminar will be provided once a
feedback is posted onto Google Review 😊