

# FRENCH SUCCESSION AND TAX

Estate Agents operating in France will assure you that there is nothing too much to fear from French succession law and tax, provided, of course, you take legal advice before purchasing your château by the Loire, Provençal mas or your Breton cottage. On the whole they are right. French law allows most families to deal with property after the death of one or both parents much as those families would wish, allowing the surviving spouse to enjoy it but ultimately giving it to the children of the marriage. The complications, and sometimes real difficulty, arise for non “standard” families although, admittedly, they are not uncommon. There will be *droits de succession* (the equivalent of inheritance tax in France) to pay but this is likely to be less than the UK inheritance tax and especially so, if the property is of modest value. There are, however, some irritating and potentially expensive mismatches in the incidence of *droits de succession* and inheritance tax.

- As in most continental countries, testamentary freedom in France is limited by the “*réserve*”. This is the fraction of a deceased’s estate reserved for his or her children (the **parental *réserve*, in the absence of children, has now been abolished**).

All children are entitled to a share of their parents’ estate:

- one child is entitled to half,
  - two to share two-thirds and
  - three or more to share three-quarters
- of their deceased parents’ estate.

- The remaining half, third or quarter is called the “*quotité disponible*” and may be left to anyone including, of course, a surviving spouse or child. The rule is modified if there is a surviving spouse who, in addition to the *quotité disponible* may also be given, or claim, a life interest (“*usufruit*”) in the children’s *réserve* or more commonly, a usufruct in the whole of the deceased’s property with the remainder (“the *nue propriété*”) passing to the children. **Although not precisely the same as a life interest under a common law trust, because it is an interest in the property itself and not a fund representing the property, HMRC treat a usufruct as a life interest and thus, typically, property in France will not be subject to UK inheritance tax on the first death of a husband and wife.**

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- Droits de succession work as a legacy tax. Instead of taxing the whole estate of someone who has died, the French divide it into different interests for different beneficiaries, each of which is subject to tax at its market value. Thus a usufruit and the nue propriété are treated as distinct assets as, in theory at least, they could be disposed of separately. Because the market in such interest is understandably small, usufruit and nue propriété are valued according to a fixed table, depending on the age of the usufruitier (i.e. the surviving spouse).

If the usufruitier is nineteen or under then his or her usufruit is valued at 70% of the market value of the whole interest and the nue propriété at 30%. If the usufruitier is aged twenty to twenty-nine, the usufruit is valued at 60% with the nue propriété at 40% and so on until the usufruitier is seventy or over when his usufruit is valued at 10% and the nue propriété at 90%.

- Each interest or legacy is then granted an “abattement” or a nil rate band which differs according to the relationship of the beneficiary to the deceased. Until August 2007, wives and children were given more generous abattement than more distant relatives or the non-related. The taxable portion of each share is then subject to tax at rates which again vary between children and more distant and non-related parties. For relatives the maximum rate is 40% whereas non-related beneficiaries pay a flat rate of 60%.
- One of President Sarkozy’s first steps in office was to introduce a law which took effect on 22 August 2007 abolishing the tax payable on the share of the deceased’s estate destined for a surviving spouse (and also for the surviving partner of PACS, similar to a civil partnership but not necessarily between two people of the same gender). **It also exonerated legacies to brothers or sisters over the age of fifty who were unmarried and dependent on the deceased.**

From August 2007 The abattement for children was increased from €50,000 to €150,000 and for brothers and sisters from €5,000 to €15,000. Nephews and nieces were increased from €5,000 to €7,500. The overall abattement applicable to the whole estate when passing to children, was also abolished. All the abattements will be revised over the years to take account of inflation and the January 2009 figures are shown in the attached table.

- At first sight these changes appear to be good news for UK couples owning property in France. They are not, however, quite as generous as they appear for UK couples. The difficulty which such couples encounter, is a mismatch in the incidence of inheritance tax and droits de succession. The amount of droits de succession is likely to be less than the inheritance tax on the same asset as the rates are generally lower and the thresholds (abattements) are higher. Typically, there will be no inheritance tax payable on the survivor’s share on the first death of a couple because the life interest/usufruit qualifies for spouse exemption both in France and the UK. The children’s reversion/nue propriété will not be taxed in the UK but tax will be payable in France because the nue propriété passing to the children is treated as a distinct taxable asset. Payment of that tax can be deferred but the occasion of the tax is the first death and on that occasion there is no inheritance tax against which to offset this tax. The UK French Tax Treaty allows French tax arising from the same event to be set off against UK tax, but only in respect of the same taxable occasion.
- Conversely, on the second death there is a UK liability to inheritance tax but no droits de succession to pay in France.
- The 2007 changes alleviate this to some extent but the change is not as radical as first appears. Most commonly the first to die will leave a survivor who is over seventy, or perhaps over sixty. In that case, on the first death the survivor’s usufruit will be valued at 10% (or 20%) of the full market value with vacant possession and the children will be taxed on the reversion at 90% (or 80%) again, of the whole interest. In other words the abolition of tax on the surviving spouse’s share does not make a huge difference as it is unlikely to account for the greater part of the tax due.

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- In many cases the increased abatement for children will mean this mismatch in the incidence of inheritance tax and droits de succession does not matter much. However, in cases where a significant amount of tax is payable on the death of the first to die, it may be worth investigating means of avoiding the discrepancy in timing by ensuring that the French tax arises on the same event as the occasion for the UK charge to inheritance tax i.e. on the death of the second to die. This can be achieved by establishing a marriage property regime in France for the property in question. Despite its name the communauté universelle may be used to establish a regime for just one property. This regime is rather like a traditional, but now obsolete, marriage settlement. The property will be owned jointly for the duration of the marriage and passed to the survivor and then to the children on the second death but, crucially, no droits de succession are payable on the first death and the burden falls, as in the UK, on the second death. Overall the charge on the second death will be slightly more than it would have been if the charge had fallen, as it normally does, on the first death because on that first death there are more shares and so more abatements; furthermore, the share destined for the surviving spouse will be wholly free of French tax. The advantage of the communauté universelle is that the charge, when it comes, can be fully offset against IHT. Communauté universelle is not possible where there are children of an earlier marriage who would be deprived of their réserve by such an arrangement.

**Abattements – January 2009**

The abatement is the "nil rate band" applicable to the share (e.g. legacy) of a deceased person's estate. It varies according to the relationship of the recipient to the deceased. From January 2009:

	Euros
Husband or Wife or PACS partner	Total exoneration
Child	156,357
Brothers and Sisters*	15,636
Nephews and Nieces	7,818
Beneficiaries with mental or physical handicap	156,357

\* Unmarried brothers and sisters aged over 50 who were dependant on the deceased also enjoy total exoneration.

This article offers general guidance only. It reflects the law as at March 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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