

FUTURE PERFECT

Estate planning during your lifetime gives you more control of what happens to your French property after your death, as **Christophe Dutertre** explains

Clients often contact me to ask about passing on their estate, either in anticipation of or after a death. Known as the ‘succession regulation’, regulation (EU) No. 650/2012 of 4 July 2012 has provided various inheritance solutions, including the option for British citizens to make a *professio juris* and choose their national law rather than French law in order to settle their French real estate.

Parents may wish to pass on their assets to their children while they are still alive, perhaps to help them buy a property or to avoid conflict between heirs after a death, or simply to ensure the smooth transmission of a family property.

Take the example of a married British couple with two grown-up children. They own a French property and would like to reduce inheritance tax on their death. A

However, if the spouses agree to dispose of their property immediately, they could gift (*donation entre vifs*) the property to their two children. For this purpose, French law offers multiple formulas, each with civil and tax peculiarities, depending on whether the owners are French nationals or from overseas.

When estate planning, the most common gift is an ‘*inter vivos*’ donation (*donation entre vifs*) before a *notaire* (governed by articles 931 and following the civil code). In a case where one spouse is French and the other is English, they can, if they wish, submit this gift (and the deed to be completed) under UK law (by application of the ROME I regulation of 17 June 2008 applicable in France since 17 December 2009).

“A French property is comprised of the life interest (*usufruit*), the right to use the property, and the bare ownership (*nue-propriété*), or right to hold it – together they comprise the full ownership (*pleine propriété*)”

French property is comprised of the life interest (*usufruit*), which is basically the right to use the property, and the bare ownership (*nue-propriété*), or right to hold it. Together they comprise the full ownership (*pleine propriété*).

With or without a will, the property would probably end up being owned by the surviving spouse (half in full ownership, half in life interest) and the children (half in bare ownership). The surviving spouse could give away his/her half share and also retain a life interest.

However, given the location of the property in France and the complexity of a different legislation, plus the potential presence of any laws which can't be excluded (even by a clause of determination of the applicable law or *loi de police*), applying article 4-1 of the regulation would be preferable and French law will be the law applicable to the contract. Alternatively, the setting up of a company structure, such as an SCI (*société civile immobilière*), might better meet the requirements of the spouses.



Our couple have several choices, as detailed below.

Inter vivos donation of full ownership of the property

The couple can choose to give the property directly to their two children. Each spouse gives half of their share of the property to their two children. On completion, gift tax will be payable after deducting the tax-free threshold per child from each parent (€400,000 in total). The result will be the ‘exit’ of the property from the parents’ estate, the children becoming responsible in full for expenses on the property.

Gift by retaining a life interest

Parents considering a gift of an immovable asset (i.e. property) to their children may wish to keep a life interest in it, either to keep using it (as a primary or secondary residence) or to generate an additional income (by letting it out). The main advantage of this option is that it considerably reduces the scope of gift tax, albeit not transferring the property tax-free to your children.

The property’s value and the age of the parents will be an important factor in this equation. The value

of the life interest is assessed by a scale set out in the French tax code. Without going into lots of detail, the younger you are, the higher your life interest.

In our case above, if both parents are in their 40s, their life interest, for tax purposes, will represent 60% of the full value of the property, leaving them 40% to transfer to their two children. With an overall tax threshold of €400,000, the parents could transfer a property worth €1m tax-free.

The parents will have achieved the double benefit of transferring the property tax-free while maintaining the use of it and/or receiving an income.

In both cases, the parents have the right to protect their interest and restrict the children from disposing or mortgaging it by inserting clauses in the deed of gift.

Gift of a temporary life interest

This is less common but may allow, in the short term, to provide temporary assistance to children by granting them the life interest of a property. The aim is not to transfer the property itself, but its use or the income it could provide. This includes a scenario where parents wish to provide their

children with an additional income for a period of time, because the children have financial difficulties or need an income while at university, for instance, or simply to provide a home in which to live.

Estate planning and company structure

Setting up a civil or patrimonial company has a particular advantage for parents who wish, during their lifetime, to prepare their estate planning for their children, while continuing to manage their assets.

If it is a real estate asset, the parents can set up an SCI (*société civile immobilière*) which holds their immovable assets, and then they give their children some of the shares. The parents, or one of them, will be appointed managers of the company, with the children only having control over some of the decisions for the property made during a board meeting.

Parents may also want to keep the income generated by assets they transfer to their children, in order to ensure a certain level of

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resources throughout their lifetime. The setting up of an SCI combined with separation of ownership (life interest/bare ownership) will be advantageous. Two examples can illustrate these scenarios:

- 1 Parents bring the bare ownership of all or part of their real estate to an SCI formed with their children, keeping a life interest over the assets. Therefore, they are the only beneficiaries of any income, despite giving shares to their children.
- 2 The parents bring full ownership of the property to the SCI and then give the bare ownership of the shares equally to their children. This scheme offers the parents flexibility in the drafting of the articles of association of the company and split power and management rights

between the shareholders.

In both scenarios the property passes to the children tax-free on the parent's death. Those children owning an SCI will be able to do exactly the same with their own children later on.

Finally, I'd like to mention the recent decision made by the Compulsory Levies Council (CPO). This organisation focuses on verifying whether the system of levies on household capital is consistent with the objectives it pursues. It recently recommended that some taxes should increase, notably inheritance tax, and some tax thresholds should be reduced, if not cancelled. It could even trigger a complete 'refurbishment' of the inheritance tax system in France, implementing a new inheritance tax system that will encourage property owners to dispose of their assets before death and review their estate planning. ■

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