Make the French connection

Buying a property in France is easier than you might think. City of London tax lawyer and French law specialist DAVID ANDERSON puts you on the right path

France is more accessible than ever from Britain, both for holiday makers and for those seeking to realise the dream of a permanent French home. Fortunately, the tax side of buying has become more favourable recently, but how the buyer of a French property plans for tax depends on an array of considerations. Among the most important is whether you intend to become a permanent resident there. If you decide to remain a UK resident – and use your French home for holidays only – you will be liable for French tax on the property in France, but not on your assets elsewhere. The property will also be subject to the French forced heirship rules, although most people can avoid this if it is inconvenient.

Married couples normally buy in both their names, but they must have a suitable French 'marriage contract'– which operates rather like a will – in place, relating specifically to the French property. The 'marriage contract' means that if one spouse dies the property can pass to the surviving spouse free of French tax. Normally no tax is payable in the UK on the death of the first spouse. However, on the death of the second spouse, the property then passes to the children, who under French law are required to receive a share. They then have to pay French

inheritance tax, but it can be deducted against any UK inheritance tax payable. There may be complications if children exist from any previous relationships, but non-French residents can usually overcome these.

The rates of French Capital Gains tax have come down considerably since 1st January 2004, giving the situation for British buyers a boost if they decide to sell their French property. You will pay a flat 16% on the gain after the usual deductions. After the first 5 years of ownership you begin to get tax relief, and the property becomes exempt after 15 years. The property is also exempt from French capital gains tax if you have ever lived in France for 2 years.

If you want to live all year round in France, and not just during holidays, different planning opportunities arise. Under the UK-France Double Tax Treaty, you will be exempt from both French and UK Capital Gains Tax on the sale of any UK assets. This would include commercial and residential investment property. You may find that the saving alone on capital gains tax in the UK pays for your French property.

Before you move to France, you may want to take a tax holiday, a period of time spent in, say, Jersey, after you have left England. During that time, you can dispose of any UK assets into a suitable offshore vehicle. Assuming this is set up correctly, the trust assets will be outside your estate for tax purposes both in England and France.

Although France does not have a law of trusts, they do have the usufruit, which is in many ways similar to a life interest trust and has advantages when it comes to inheritance tax. In the case of a property, you may have a usufruitier, or life tenant – often a parent – who has the right to remain in the property for life. The children usually own the remainder, or the 'nue-propriété'. If this is properly arranged, the property passes tax-free to the children when the parent dies. This sort of arrangement is very common in France and works whether you are a tax resident there or in England. Don't forget, though, that it may form part of your estate if you remain domiciled in England, and in that case, careful planning is needed.

Taxation is a complex subject and you should negotiate the wilderness with a professional adviser

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If you would like to attend a Sykes Anderson LLP seminar on tax planning for purchases of French property please email David Anderson.