

Buying a Residential Property in France

Expert knowledge means success

Contents

1. Introduction
2. Tax and costs on buying residential property in France
6. Tax Position for UK Property Investors in France
8. Offshore Trusts
10. Buy to Let
11. Furnished Lettings - Business Tax
12. Unfurnished Lettings - Property Tax
13. French Capital Gains Tax new rules from 1st January 2004
17. French social security contributions
20. UK people buying French property from UK sellers
21. Further Information

Introduction

Buying a property in France is no longer just an option for the very rich. Over the last ten years, the number of British people buying homes in France has doubled: 500,000 Britons now own properties in France. Disillusionment with the UK, holiday homes, uprooting in search of a better life and retirement are all reasons Britons look across the channel. Like the UK, French property prices are rising. There has been a steady increase in recent years in prices across the whole of France, with the biggest rises being in rural areas, where affordable renovation properties can be found. Inland properties are generally cheaper than coastal ones.

Please read the important notice in the sidebar on this page.

Where to buy

Bordered by eight countries, it's no surprise that France is Europe's leading tourist destination. 13 million Britons visit France every year. Buying a property in a popular tourist area could provide a valuable second income. The following areas are among the most popular.

Brittany

Brittany is the most popular destination in France for British tourists. It is famous for its clean sandy beaches, seafood, local produce and large percentage of English speaking locals. It has a similar climate to England and is easily accessible.

Normandy

Normandy is famous for its sandy beaches and fishing ports. It is a quiet, rural region: ancient churches and farmhouses are juxtaposed with fashionable resorts. It has a rich shared history with Great Britain: the site of the D-Day landings and the Bayeux Tapestry can be viewed here.

Picardy

Picardy is often passed through, on route to a final destination. However, it too has fine sandy beaches and fishing village to offer, some of historical significance. The battlefield of Agincourt is also here.

Paris

Paris, the capital of France, is a romantic, vibrant, busy city. Famous for its art galleries and museums, it is also home to some spectacular landmarks. A cosmopolitan city, it offers excellent eating and shopping.

Vendée

The Vendée has 88 miles of sandy Atlantic Coast beaches. An easy journey from Great Britain, it offers a warmer sunnier climate than can be found at home. Inland, there are marshes, and pine forests.

Loire

The Loire is famous for its chateaux, fine vineyards and produce. Its gentle rolling countryside and meandering river, France's longest, are characteristic of the region. This fertile valley is known by the French as "the garden of France".

Dordogne

Warmer than the Loire, the Dordogne is also a region of green hills and meandering rivers. It too has grand chateaux and ancient villages. Its gentle rolling countryside is perfect for exploring its natural beauty. The Dordogne river flows through walnut groves and truffle woods and is often explored by boat and canoe. Prehistoric sites can also be explored here.

South West France

The south west of France is typified by pine forests, lakes and golden beaches with some of the world's largest sand dunes. The Bordeaux and Cognac regions are here. The Pyrénées peaks soar to 7,000 feet, offering a spectacular natural backdrop.

Western Mediterranean

This is a sun-worshippers destination. It's an area of contrasts with a wild natural landscape in the North, and sea, lake and rock shores.

South of France

The South of France is synonymous with glamour and sunshine and includes the famous resorts of St Tropez, Nice and Cannes. The fashionable beaches and Provençal landscapes are all part of its appeal.

Massif Central and Burgundy

Some of the prettiest villages can be found in the heart of France. Famous for its red wines, there are plenty of tasting opportunities to be had. The impressive gorges and garrigues of Ardèche and Auvergne provide a dramatic backdrop.

Use of this publication

IMPORTANT NOTE

This publication was written in 2008 and has not been updated. It should only be used as a general guide.

As with most things, it is advisable to take professional advice before taking action on matters referred to. Nevertheless, we hope the publication is helpful.

Eastern France

Picturesque eastern France is set with deep forests and winding valleys interrupted by collections of wine towns, medieval villages and ruined châteaux. Good food and wine are to be found everywhere. The Alsace and Champagne regions are found here.

The French Alps

The Alps are a delight all year round. In winter they attract the skiers. When the snow has melted, it leaves behind green meadows, forests, lakes and of course the spectacular mountains.

Getting there

France is easily accessible from Great Britain. There are over 250 paved runway airports in France. Destination airports from the UK include: Biarritz, Bordeaux, Brest, Lille, Lourdes, Lyon, Marseille, Montpellier, Mulhouse, Nantes, Nice, Pau, Perpignan, Strasbourg, Toulon, and Toulouse.

The Eurostar service runs every day between London and Ashford to Paris, Lille, and Calais-Fréthun. Direct seasonal services run from London and Ashford to Avignon in Provence and to the French Alps. In Lille or Paris, you can transfer to France's internal train network: key destinations include Bordeaux, Marseilles, Nice, Avignon, Tours, Lyon, Poitiers and Montpellier.

The Channel is the world's busiest stretch of water. Ferry ports in France include Dunkirk, Calais, Boulogne-sur-Mer, Dieppe, Le Havre, Cherbourg, Caen, St-Malo and Roscoff.

Exchange rate fluctuations

The price you pay for a property in France is usually based upon the exchange rate prevailing at the time of your offer; changes in the exchange rate will affect the end price you pay.

If you believe the exchange rate could increase the price you will pay, you should consider either buying your currency at the time the offer is accepted, or buying your currency over a period of time to offset exchange rate fluctuations. Exchange rates are usually linked to interest rates and can therefore be effected by economic growth, war and natural disasters. Banks and currency specialists can advise on currency purchases.

Tax and costs on buying residential property in France

This section advises on notaries' costs, owing taxes, renting, renovating, selling, forced heirship and Social Services and charges through frequently asked questions.

It is based on an imaginary conversation with an English couple in their fifties about to take early retirement in France, financed by selling their English home until they take their pension.

Notaries' costs

Why are the notaries' fees so high?

They are fixed by statute. There is no price competition. In addition to the fixed charges notaries can charge extra when dealing with complex cases. You should ensure you are being charged the same as a French person without this supplement.

What is the best way to get a good deal out of a notary?

Forget about knocking him on fees. Instead agree the fee put forward but insist that a will and, if applicable, a marriage contract are thrown in -see below.

Why are notaries generally not forthcoming about tax planning?

They are appointed by central government and are effectively tax collectors. Their duties extend beyond conveyancing to maintaining registers for the French government. When it comes to taxes they are definitely not on your side. Remember also that many senior positions in the French Land Registry are held by French Tax inspectors who monitor sales and purchases and may query suspiciously low prices.

What tips do you have about selling?

The notary is under a duty to withhold capital gains tax. Make sure you are dealing with a notary who is aware of the tax rules and any exemptions for non-residents. Also notaries may charge you a fee for discharging your mortgage. Sellers are often not told about this charge and it is simply deducted from the net sale proceeds.

French Property market slumps

As in other parts of Europe and the US the property slump has reached France with the overall volume of business down.

The Euro/£ exchange rate has hit British second home buyers hard. French sellers are reported to be settling for 30% less than the asking price.

Owning taxes

What are the annual local taxes on property?

Local taxes are levied on a calendar year basis and are determined by the local authority. Notaries are under an obligation to collect them on sale and will deduct unpaid local tax from your net sale proceeds.

What is the annual wealth tax?

This is an annual tax payable on worldwide assets if you are French resident. If you are not French resident it is payable on your assets in France. You start paying the tax on net assets over €70,000 at 0.55% and it goes up in bands to 1.8%.

Are there any deductions?

Yes, you can deduct debts, and some business assets are exempt.

Can you legally reduce it further or avoid it altogether?

Yes, this can be done easily and cheaply, and dealt with in England. However this planning needs to be put in place before you buy the property and before you submit your first tax return in France. Remember that the annual return will disclose all your assets to the French Revenue and planning at the outset is essential, especially if you intend to become resident in France.

Buying in the name of a UK company or trust

Can you buy the French property using a UK company?

Yes. You can use any UK entity which under UK law has capacity to own land.

What advantages does a UK company have?

You have a structure you are familiar with. The shares can be transferred easily without involving a French notary.

If you do not become French resident then the shares are outside the French Inheritance Tax net but within the UK Inheritance Tax net. This means that, say, gifts by will to a surviving spouse, which may be taxable in France, are not normally taxable in the UK. You can also put the shares into an English or offshore trust though this area requires specialist advice. This route is likely to be better than the use of a tax haven company owning the property direct for the reasons given below.

What are the disadvantages of a UK company?

The UK company will be taxable in the UK on any capital gain you make.

You will have potential additional tax liabilities when you distribute the net sale proceeds from the company or liquidate the company.

It is unlikely to be a suitable vehicle for most people buying a second home.

Buyers are normally reluctant to buy shares in a company and normally insist on the property being transferred from the company to them.

Can an English trust or an offshore trust buy the property?

Yes; however, French law does not recognise trusts. The trustees will be viewed for tax purposes as owning the property outright, either as a partnership, or possibly as a company. Because of French unfamiliarity with trusts and the consequent unpredictability of the way the tax authorities will view them, it is generally not advisable to buy French property using a trust. If tax planning or the structuring of the transaction requires the use of trust money it is likely to be better to structure it as a loan from the trustees to the beneficiary.

Buying in the name of a tax haven company

Can you buy the French property using a tax haven company?

Yes.

Why is it not advisable to buy French property using a tax haven company?

Generally such companies are assessed annually to French tax on 3% of the value of the property. It does not matter whether the property is in fact rented or not. You cannot offset any mortgage or other costs against this tax.

Are there any other useful offshore angles?

Yes, several, but you need specialist advice. This is not normally worth considering unless your assets exceed £1 million, as the costs of advising, setting up and maintaining an offshore structure are high. Remember that if anything goes wrong the property is situated in France and will be security for any French taxes claimed. In practice, if you need to sell the property, the notary will not release the sale proceeds to you until the tax authorities are satisfied that all French tax

has been paid. This is very different from the UK position in which the solicitor is not under a duty to obtain a clearance from HMRC.

Buying in the name of a French company

What companies are available?

There are several French entities you can use, with different tax regimes. For straightforward purchases of second homes by a couple it is, however, best to buy in your own names. If you are buying a property with other people then a French company may be worth considering,

Renting the property

Does it make any difference whether you rent the property furnished or unfurnished?

Yes. If it is furnished you are taxed on running a commercial business.

How is a UK-resident owner taxed on the income?

You pay French income tax on the profits under Micro-BIC or the real regime.

Are there any traps?

Yes. Non-French residents who live in tax havens can be deemed to be in receipt of rents equal to three times the rental value of the property (usually calculated as 5% of the property value). There are various exemptions to this.

What forms need to be filled in and which tax office do you deal with?

Forms 2042N and 2044 are obtainable from any French tax office or at the French Inland Revenue website, www.impots.gouv.fr. These need to be completed before 30th April in the following tax (calendar) year. Care needs to be taken when completing this form, especially for the first time, and professional help is advisable. English residents deal with Centre des Impots de Non Residents. 10 rue du Centre 93 465 Noisy le Grand Cedex tel 01 57 33 83 00. If you become resident in France you deal with your local French tax office.

Renovating the property

Can I get out of paying VAT if an English-based architect invoices me?

Yes. The English architect does not have to charge VAT either in England or France. You should ensure his invoice specifically refers to work in connection with your French property. An architect based in

France will have to charge VAT if registered for VAT. Similar planning may help avoid VAT on other services.

Other income - I am retiring to France

How is my pension taxed?

If your pension is derived from employment in the UK Armed Forces or otherwise for the UK Government it is taxed in the UK and is exempt from French tax. All other UK pensions are taxed in France and not in the UK. France will tax your English "tax free lump sum" commonly taken on retirement. If you are planning to take your pension after you are resident in France you may want to reconsider and draw your lump sum whilst you are still an English resident.

How am I taxed on rental income from a rented property in England?

The rental income is subject to UK tax. The tax is deducted at source though you can normally reach an agreement with the UK Revenue to receive the income gross and account in the usual way.

I plan to rent my English home for a number of years and then sell it. Will I have to pay UK Capital Gains tax?

No. Under the current UK-France Double Tax Treaty the UK has the right to tax the sale proceeds but you will not be taxable in the UK if you are not UK resident. There may be a tax liability if you do not remain non-UK resident for at least 5 years.

Are there any tax angles on the lump sum from the sale of my English property or any other assets normally liable to UK CGT?

Yes. It is normally not a good idea to remit the money to France. If you are selling when you move and if you time your move correctly you can be resident nowhere for a short while. This is because the UK tax year runs from 6th April to 5th April while the French tax year runs on a calendar-year basis. If you simply go on holiday (anywhere other than France) you may in the meantime be able to dispose of assets with large gains into a discretionary offshore trust free of capital gains tax. This needs to be done after you leave the UK and before you take up residence in France. Timing is very important and professional advice is essential. Provided the offshore structure is set up correctly when you become French resident you will not own the assets and so will not pay any tax on them.

Selling the French property

If I never become French resident, upon selling the French house, what tax do I pay?

You are liable to French and UK capital gains tax. The notary deducts French CGT (which is up to 33.3% of the gain) from the sale proceeds, and in many cases will refuse to pay anything over to you until you have appointed a French Tax Agent to agree your tax liability with the French Inland Revenue. If you have carried out improvements to the property these may be deductible from the gain, thus reducing the amount withheld. This is generally an unattractive option as most of the tax agents have very close connections with the French Revenue and may require you to deal with fairly exhaustive enquiries. If you are suspected of dealing in property - i.e. you have bought property in order to renovate and sell it on quickly the notary will deduct 50% of the profit. In our view this is illegal under the UK-France Double Tax Treaty as the UK does not apply any withholding tax to French residents who buy UK land. It is also likely to be illegal under European law. If anyone is experiencing this problem we have the expertise to assist in resolving it.

What happens if I become French resident?

Provided you are resident in France for one tax year, gains on your main residence are exempt from tax.

Forced heirship

What is the forced heirship problem in France?

Under French law you cannot disinherit your children; they are entitled by law to a share of your estate. This is widely misunderstood in England because we do not have marriage contracts as in France. In France most couples marry under a community of property contract. This means they are treated as owning three pools of property: property belonging to each of them and community property. The forced heirship rules apply to property owned by each of them separately or by both of them jointly. To increase the rights of the surviving spouse, French couples draft a will or make a gift between spouses.

So how does the problem arise for English couples?

English law does not have the concept of community of property and everyone from England is, in French eyes, married under the

separation of assets regime - i.e. each spouse owns their assets and there is no community. This means the forced heirship rules bite on the first death. It also means that French Inheritance Tax is payable on the first death..

What is the solution for English couples?

Establish a French marriage contract under which you hold French property including the house as part of a community of property. The notary who conveys the property for you can also deal with this. Try to have it included in the price as forming one later can be expensive. On the death of the first spouse the community will be dissolved and the deceased spouse's half share in the property will pass automatically to the survivor. The notary draws up the marriage contract and various formalities are required. This contract is not possible if there are children by earlier marriages.

Does the French marriage contract affect the position in England?

We don't know. This is a complex area on which there are no clear precedents. It is likely to result in a contentious probate test case in the future. The best way to avoid the problem is to have a marriage contract which states that it only applies to your French property, if you are UK resident.

What about single people who do not want children to inherit?

The simplest solution is not to die in France. Sell up and move back to England in good time. Alternatively purchase the property in the name of an English company and bequeath the shares, not the property. The shares will be deemed assets situated in England and you will be liable to UK Inheritance Tax on them. No French Inheritance Tax will be payable. The shares will not be French property and so the French inheritance rules do not apply to them.

What is buying "en tontine"?

This clause is often used between people who are not married, for instance between partners. In using this clause the surviving partner can have the whole property automatically without taking account of the forced heirship rules. However, even if this clause seems very attractive at first sight, the taxes due are so heavy that it is often best to avoid this structure.

Social contributions

Will I have to pay French National Insurance?

If you are retired and over UK retirement age then you generally will be covered under the UK scheme and will not make payments. If you are under retirement age you may be required to contribute about 8% of your income from whatever source. French National Insurance contributions are higher than in the UK but the benefits are generally better.

What about running a small business such as a B & B?

French national insurance is very high. You can expect to pay 20% of turnover in NI contributions. This, coupled with high French income tax rates, can be unattractive.

Fortunately simple planning using a UK company can legally avoid or substantially reduce your liability. If you employ staff your employer's NI can exceed 50%.

How can a UK company help?

Your customers contract with the UK company, which then enters into a contract with you to provide the services in France. The UK company makes a profit, which reduces the profit you make in France. The UK company can make up to £10,000 pa free of tax (while left in the company). You need specialist advice to set this up. You also need to consider how you draw money out of the company. More sophisticated planning may involve paying small amounts of National Insurance to the UK to preserve pension and other benefits both here and in France.

Tax Position for UK Property Investors in France

This section advises on the tax position of investing in and developing French residential property, through frequently asked questions.

I have heard that France is a high tax country for UK property investors to move to. Is this correct?

No this is totally wrong. It is a complete tax haven for Capital Gains Tax and a partial tax haven for income tax. The significant tax breaks in France for UK property investors are simple to use but not well understood.

I want to stay in the UK for the next few years and build up a portfolio of rented properties in France. How will I be taxed on the income?

The income will initially be taxed in France. You will have the usual deductions for mortgage interest, repairs and the other outgoings in a similar way as in England. The rate applicable is 25%. The income should also be included in your UK tax return as it is subject to UK tax as well, though a credit is given for any French tax paid.

In order to deduct the mortgage interest against the rents do I have to borrow from a French bank or the French branch of a UK bank?

No you can borrow from your normal UK lenders. You can even set up a mortgage with a private person.

Does it make any difference if I rent furnished or unfurnished property?

Yes. In France unfurnished property is treated as non-commercial income whilst rented property is treated as commercial. They are taxed in different ways. In England there is effectively no difference.

Any other tips?

Yes, be careful if you buy a property to rent out furnished using an SCI. SCI's should not be used for commercial purposes and if they receive income from furnished property this may have adverse tax consequences.

How does the UK Revenue work out the net income on my French property? Do they use the French net income figure or do I need to do a further computation using the UK rules for deductions?

You work out the net rent using the same principles as for the letting of a UK property. You ignore the special UK rules for furnished holiday lettings. The "foreign" part of the UK annual tax return takes you through the computation. In other words the net figure you get for UK tax will be different to the net figure you have already paid tax on in France. However, if your property income is less than £15,000pa then you do not have to break down your expenditure and in practice the same figure as for net income in France is probably accepted by default by the UK Revenue.

Does it make any difference if I move to France?

Obviously no UK tax return will need to be filed. However, French national insurance may be levied on the rents. This does not happen whilst you are resident in the UK as you are then outside the French National Insurance net.

If I move to France and still have a UK company can I use this company to receive tax-free income and other benefits?

Yes. This is a very useful tax and financial planning area with plenty of benefits, which is often sadly completely overlooked by expatriates in France. You need expert advice here.

Once I am in France I may want to sell some of my UK properties and reinvest into French property. Will I have to pay any capital gains tax either in the UK or France?

There should be no tax to pay either in the UK or France.

I thought if you ceased to be UK resident you would become French resident and pay tax in France?

You will be non-resident for UK purposes and not liable to UK CGT, assuming you do not return to the UK within 5 years. Although France taxes its residents to French CGT on a worldwide basis this is subject to anything to the contrary in a double tax agreement. The UK France double tax agreement is interpreted by the French Inland Revenue to mean that you pay no tax on gains made on English property. This surprisingly makes France a tax haven for UK property investors.

Once I am in France how will I be taxed on my rental income from my UK properties?

Any properties in your personal name will be taxed in the UK under the non-resident landlord scheme at 22%. The income is not taxed further in France because of the way France interprets the double tax treaty. The income should however be included in your French tax return and may push you into a higher tax bracket in France for the taxation of your French income. Again surprisingly moving to France is likely to save a higher rate taxpayer 18% on his UK rental income.

How is the income computed for French tax purposes? Can I just use the UK net figures or do I need to recompute using the French rules?

The French Revenue generally accepts the UK net figure.

Do you have any other thoughts on this?

Yes. Think carefully about putting your UK properties into an offshore trust before you arrive in France. This can be helpful in keeping the assets out of your name for French Wealth Tax and Inheritance Tax. The tax treaty with France is being renegotiated and the current tax friendly approach in France may well change.

I want to start dealing in property in France now whilst I am still resident in the UK. This will start with renovating properties. How is this taxed?

You will be treated as carrying on a trade of development in France and will be taxed at 50% on the profit.

Is this how local French developers are taxed?

Property dealers are classed as "Marchands de Biens" or traders in France. They pay effective tax at similar rates.

Is there a way around this?

Yes you can buy and sell the property using a UK company. The tax rate on a UK company is likely to be very much lower and you may have such a company available. It also means that you do not have to extract any money from a UK company you may already have either as salary or dividends at an additional UK income tax cost.

But won't the Company be trading in France and be taxable there?

It will be trading in France but if it does not have a permanent establishment in France, the UK France Double tax Treaty exempts the UK company from French tax in such circumstances. The good result is that the company is taxed only in the UK.

So it's very important for the UK Company not to have a permanent establishment in France?

This is essential to avoid the excessively high French tax. The tax saving is likely to be at least 30%. Remember the first £10,000 profits in a UK company are tax-free.

What is a permanent establishment?

This is a tricky question. It is easier to say what it is rather than what it is not. A sales or site office will be a permanent establishment. In some cases a desk in a corner of a room has been viewed as a permanent establishment. It is important that the documentation clearly shows no intention to create a permanent establishment.

So how will I run the development?

The structure will have to show that the company carries out its trade in France through an appointed independent agent. The agent must not be connected with the company and should be paid at the local going rate. Typically the agent's powers are very restricted to day-to-day matters and all major decisions and payments for supplies are made from the UK company.

Assuming I am or become resident in France can I still use a UK company and this structure with say the UK company appointing me as the local French agent?

Yes though the way the UK company is set up is important to avoid the French authorities assessing it on the basis it is fully taxable in France. You would be able to deal with routine site matters only.

What other practical snags are there?

It is important that the notary you use to carry out the conveyancing is aware of the double tax treaty to avoid the notary withholding 50% of the profit subject to you getting a tax clearance. The double tax treaty overrules domestic French law though local notaries may not appreciate this important point. The notary deducts from the money you receive the French CGT which is 50% of the gain and will refuse to pay the sale proceeds to you until you have appointed a French Tax Agent to agree your tax liability with the French Inland Revenue. Your works to the property may (at the notaries discretion) be deducted from the profit reducing the amount withheld. This is generally an unattractive option as most of the tax agents have very close connections with the French Revenue and may require you to deal with fairly exhaustive enquiries. Please note that if you are not dealing in property then 33.3 % is withheld by the notary on the same basis as above. In our view this is illegal under the UK France Double Tax Treaty as the UK does not apply any withholding tax to French residents buying UK land. It is also likely to be illegal under the European Convention on Human Rights.

Offshore Trusts (and moving to France)

This section addresses the tax position of offshore trusts, through an imaginary conversation between a property developer and a tax adviser.

I have heard about non-domiciled people legally avoiding UK tax by having offshore trusts. I want to become non-domiciled to improve my tax position for property investment purposes. I am based in the UK and want to stay here but I have a holiday home in Spain.

Most people think about Inheritance Tax savings when they hear the word "trusts" but the potential totally legal ways of saving Capital Gains Tax and Income Tax are often overlooked. It is best to get some terms sorted out at the beginning. The "settlor" is the person who sets up the trust i.e. you, the "trustees" are the people who have the assets registered in their names and the "beneficiaries" are the people who can benefit from the trust say your family.

So I will be the settlor but who will be the trustees?

For the trust to be offshore the trustees must not be resident in the UK. You can use a Bank's trust company say in Jersey or two relatives or friends living abroad. Obviously they must be trustworthy as your property and the bank account associated with it will be in their names and under their control.

I don't want to use a bank as trustee because it's too expensive and I don't want to pay annual maintenance fees to them. I'd like to use either relatives or friends abroad to be the trustees.

That should work provided the country your trustees live in recognise trusts and do not simply view the property and money as belonging to your relatives outright and tax them on it there. This should be easy for your solicitor to check or you can check by contacting a local tax lawyer. Tax authorities in some countries, do not recognise trusts and have a hostile attitude towards them and should be avoided at all costs.

Does this mean the trust is subject to the law of the country where the trustees live? I would prefer it to be subject to an English kind of legal system such as Jersey.

You can do this by setting up a trust in English using a standard Jersey discretionary trust precedent and providing for the trust to be governed by Jersey law. You can provide in the trust deed for the trustees to meet annually in Jersey. The trusts bank account can also be in Jersey. There is no reason why the trustees cannot instruct the bank to send you a copy monthly statement.

I will be the main person dealing with the properties and I live in the UK? Does this cause a problem?

To be effective for UK tax purposes the trust needs to be run from outside the UK. This means that the general administration of the trust must be carried out abroad and decisions as to the purchase letting and sale of the property taken abroad. Minutes of trustee meetings should be kept. The trustees could resolve that you are to deal with the day to day running of the site but they will take major decisions. It is a good idea to have this documented.

What is a discretionary trust?

This is a trust in which the trustees have a discretion as to whom they pay out money. They have a group of nominated people whom they can benefit and they decide what if anything these people receive. Other kinds of trust give beneficiary an interest say to receive income for life or on marriage but for offshore tax planning normally only discretionary trusts are used. It is a good idea to get the trust deed drawn up by a lawyer to avoid inadvertently setting up the wrong kind of trust.

So this means the trustees could go against my wishes by paying money to say my son and excluding my daughter?

Yes in theory though the trust deed would contain powers for you the settlor to appoint additional trustees to overrule them. There are however obvious risks when assets are not directly under your control. A well-drafted trust deed can protect you from many of these problems.

I will need to borrow money to buy the property. Who signs the mortgage deed and who signs the contract to buy?

All this has to be done by the trustees and you will in practice have to explain the

structure to the bank. You may have to give a guarantee to the bank, as they will have no record of your trustees. You don't need to explain anything about the trust to the seller of the land or indeed to any buyer in due course and no mention of the trust will appear at the Land Registry.

I don't know yet whether I want to keep the property as an investment and rent it out or sell it on straight away. Does this make any difference?

This is very important. The offshore trust route only works if the property is held as an investment. If you are going to sell it on quickly you are likely to be dealing in land and this will be taxed in the UK as a dealing profit whether or not it is owned offshore. If you rent the property out for a couple of years and show it as a capital asset on your balance sheet rather than as stock you will probably be all right. The trustees will sign the lease and the rent will be paid to them.

So if I do all this can I buy the property in the trustees name and not pay any income tax on the rent or Capital Gains Tax when I sell?

It depends! A lot depends upon whether you are domiciled abroad. Domicile is an elastic concept and at a very simple level means where you intend to spend your last days. There is lots written about it but the practical solution is firstly if you have foreign connections to see if your accountant has ticked the non-domiciled box every year on your income tax return. A lot is at stake here and if he has not he should write to HMRC and agree your non-domiciled status with them now. You can obviously be or remain resident in the UK for many years but never be domiciled here.

I have lived in the UK all my life - what should I do to become non-UK domiciled?

It is easier to establish a foreign domicile if you were born abroad or have some family connection to another country. In the absence of this you will need to build up a connection with say Spain by spending time there and integrating into the local life there. You can do this by joining local clubs and possibly applying for Spanish citizenship. Specialist legal advice is sensible on persuading HMRC of your change of status. It is important to deal with this properly as a first refusal by HMRC can prejudice subsequent applications.

I thought if you had lived here for 17 out of the last 20 years you were automatically deemed domiciled in the UK?

This only applies to Inheritance Tax. It sounds as though you need to spend more time at your home in Spain and keep all your receipts to show the Revenue how strong your connections are there.

How do you get the properties into the names of the offshore trustees without paying tax in the first place?

Good question. The easiest way is to buy future investment properties in the names of the offshore trustees. You will have to transfer some cash to the trustees at the outset and although this may have some Inheritance Tax implications it will not involve any Capital Gains charge. If you transfer existing properties into the trust there is likely to be a Capital Gains Tax charge. It may be possible to get round this though this will depend on the facts of each case.

Assuming I am Spanish domiciled with non-UK resident trustees can the trustees sell the property and not pay Capital Gains Tax?

Yes. However, if you (the "settlor") were domiciled here then you would be liable to capital gains tax, which would defeat the whole object of the exercise. This is one reason why the issue of establishing your Spanish domicile is so important.

After the trustees have sold the property tax free and have the money in a bank account in Jersey can they pay it to my children in the UK or does the money have to stay in Jersey?

If the money is paid to a beneficiary who is resident and domiciled in the UK then the beneficiary pays Capital Gains Tax on the money received. If the children are not domiciled in the UK the money can be paid to them free of any Capital Gains Tax liability. Of course if you have relatives abroad they could be the beneficiaries and no tax would be payable because they are not resident or domiciled here.

What about income tax?

The trustees are liable to tax on the rental stream from the property. The usual deductions e.g. for bank loan interest and repairs will apply. Surplus money invested abroad in say, a Spanish rental property, will not be taxed in the UK but you have to be careful of not being taxed personally as the settlor.

When could I personally receive an income tax bill in the UK at higher rates, as I am a 40% taxpayer?

If you or your wife could benefit from the trust you may be personally taxable as though this was your income. This could apply to rental from the property as well as otherwise tax free income from say bank interest paid in Jersey.

If I exclude my wife and me but my sister and her family in Spain are the beneficiaries under the trust will this work for avoiding income tax on me personally?

Yes it will work for UK tax purposes but there may be a tax liability in Spain. You should be aware that there are UK anti avoidance laws which are likely to apply if say your sister made a gift of the money back to you.

Is there anything else I need to know?

Yes be very careful and have everything checked by a specialist tax adviser. The rules are technical and small matters of detail in each particular case can make the difference between paying tax and legally avoiding it. Please remember that the questions and answers in this section have not dealt with Inheritance Tax.

Buy to Let

This section addresses income tax on French buy to let properties through frequently asked questions.

Where do I pay income tax on my rents?

You have a primary liability in France. You also have to include the rent in your UK tax return and may have a further liability though you have a credit for any French tax paid.

How is income tax worked out on rented flats and houses in France?

The first step is to decide whether the property is to be rented furnished or unfurnished. This is important and will have an important impact on the final tax bill. It also affects the local taxes (i.e. rates) you pay. If the property is let furnished it is taxed under the business tax rules. If it is unfurnished it is taxed under the property rental rules. Please remember this discussion is only about income tax and you need to think about tenants' rights, which vary between furnished and unfurnished properties.

You also need to think about other taxes such as Capital Gains Tax, Inheritance Tax and local taxes.

Furnished Lettings - Business Tax

What about bed and breakfast?

The income will be taxed under the business rules.

What about gites?

They will be taxed under the business rules.

Assuming I rent furnished how is the profit calculated and what can I deduct?

This is where it starts getting tricky and where mistakes can be expensive. If your total furnished rental income is a less than 76 300 euro per annum you can deduct a flat 72% and be taxed on the balance i.e. 28%. This simplifies book keeping and accounts. You can also be taxed either as a "professional" or a "non professional" landlord which has different and important tax consequences which extend beyond income tax. Getting this wrong can be very expensive long term for a landlord.

What happens if your actual profit is either higher or lower than 28% of turnover?

It doesn't matter. If you have chosen this tax option this is what you pay. However care needs to be taken when filling in your UK tax return especially if your real profit is much higher than 28% of turnover as the UK Revenue does not recognise this French tax option.

Can you use this system if a company or an SCI owns the property?

No. There is a trap here for investors who own a property through an SCI. If it rents furnished property it loses its tax transparency and is taxed like a company. English purchasers do not often appreciate this point.

Are there any other angles on this?

Yes some good ones especially if you are doing gites or holiday lets. This enables you to get the best of both worlds. This opens up other interesting avenues worth exploring.

If you have higher outgoings can you opt to be taxed in the normal way.

Yes. You may decide to do this if say your mortgage finance is high and you do not expect a profit for a few years. You will then need to fill in a more complex tax form with details of your expenditure.

What can you deduct?

Maintenance costs, local tax, professional tax, management fees, insurance premiums, amortisation of the building, amortisation of the contents and mortgage interest payments.

How is the amortisation, or writing down (depreciation) worked out?

The rate of write off depends on the life of the asset. It is between 10% and 20% for furniture and other chattels and 3.33 % for old buildings and 2.5% for new buildings.

I anticipate the investment property running at a loss for a few years with me topping up the mortgage payments for the first few years. What should I do?

The fixed 72% deduction is not for you, as you will make a loss. Prepare your tax account in the normal way. You can carry the tax loss forward for the next 5 years and set it against profits from rented furnished property or other French business activity.

Can I set the property rental loss off against my salary? I am a 40% taxpayer and if I made a £10,000 loss in the first year on the property investment can I reduce my PAYE tax bill by £4,000?

Provided you comply with some straightforward French regulations which should not pose any difficulty, you can set the loss off against any French income. This is needless to say very popular in France with high earners, as it does not require them to actually work in the business.

My salary is paid in the UK. Will the UK Revenue allow this deduction against say my PAYE?

No. You will pay UK tax on the French income (under Schedule D Case V), which prevents you from setting a loss on your French rental business off against your UK salary or indeed any other income. You can set it off against a profit on say a Spanish or other foreign rental property though this is probably worthless for most people. Of course the double tax treaty with France means you will not be taxed on the same income twice.

So what do I have to do as a high earner to get the deduction?

Work out a way to receive some of your income in France. If you have your own UK business and intend to work part-time in France and part time in the UK this is worth exploring.

Do I have to charge VAT on the rent?

In most cases no because your turnover will be below the annual limits. If your turnover goes above the limits then VAT has to be charged.

Do I have to pay French National Insurance on the rent?

Yes but only if you are French resident. This is at roughly 7%.

After the net rent is worked out what rate is it taxed at?

25% for non-French residents. It is more complicated for French residents but may mean they pay less.

What about wealth tax?

You may be able to claim business exemption relief.

What about Inheritance Tax? Can I get business exemptions?

This is more complex and outside the scope of this publication.

What about French Capital Gains Tax?

If set up properly you are completely exempt from French Capital Gains Tax after 5 years of renting the property. This is a fairly arbitrary and technical part of the French Tax Code with important tax breaks, which is not intended for the ill informed.

What Capital Gains is paid otherwise?

If not set up properly, you are taxed as a private person and do not benefit even from the business capital gains tax regime.

What is the "Professional Tax"?

This is similar to English business rates. Some areas of France levy this on landlords of furnished premises. This is worked out using the Land Registry rental values for the property and can be expensive. There have been a number of court cases as to whether the tax can legally be levied on landlords in these circumstances. The best approach is to find out if you are buying in an area where it is payable and if so how much will be due if you rent it furnished. There are ways you can become exempt from paying this tax. Please note you do not pay if you rent unfurnished

because you are not then deemed to be carrying on a business.

Any thing else I should know?

You can reduce your tax liability further by belonging to a "Centre de Gestion" which can result in your tax liability being reduced by 20%. Please also note that local taxes (rates) need to be thought through carefully as many English buyers are paying excessive amounts through lack of simple planning.

Unfurnished Lettings - Property Tax

How is unfurnished rental income taxed?

Under a totally different tax regime. This artificiality has been criticised in France but as a taxpayer you should ensure you are set up to maximise the advantages. If your rental income is less than 15,000 euros you can opt to be taxed with fixed expenses of 40%. You can opt out of this if you wish.

How is the net income calculated if you have income over 15,000 Euros or opt out?

Broadly as for furnished property with a deduction of 14 of gross rental to cover depreciation.

Do I have to charge VAT on the rental?

Normally no.

How is the French Capital Gains Tax worked out?

You are taxed as a private person rather than as a business. This will usually result in you paying more tax. The 5-year exemption from French Capital Gains Tax for property set up furnished lettings does not apply and you need to rely on the usual rules.

Are there any other specific reliefs?

Yes. There is the Besson Law and the Lienemann law. These are technical and aimed at lower income tenants.

What local taxes are payable?

The occupier of any furnished dwelling pays the taxe d'habitation whether used as a main home or second home. You generally do not pay this tax if you pay the professional tax. There are angles here to avoid paying the professional tax if the taxe d'habitation is significantly less. The taxe foncier is also payable by the owner of a building or land.

This is a local tax not to be confused with *revenus foncier*, which is income tax on rent. You can deduct this tax against your rental income if set up properly.

French Capital Gains Tax new rules from 1 January 2004

This section advises on the new French CGT Rules, which came into force on 1 January 2004, through frequently asked questions. The position stated is as at March 2004.

How have the Rules changed?

Before 1st January 2004 the gain was computed by the French resident taxpayer and included in their annual Tax Return Form 2042. There was no deduction by the notary on completion and to a certain extent the French Revenue relied on the honesty of the taxpayer. There was a special regime for non-French resident taxpayers. The notary dealing with the sale deducted 25% of the net gain made by non-resident individuals and 33 1/3 % made by non-resident companies and paid it direct to the French Revenue. There were regular arguments about whether invoices from non French VAT registered builders could be deducted in working out the gain. The system has been simplified and both French and non-French resident taxpayers are now broadly treated in the same way as non-residents i.e. deduction by the notary on the sale.

What are the new rates?

Good news here. The rate of CGT for both French and non-French residents, who are residents of an EU, country is 16% of the net gain. If you are French resident you pay an extra 10% in French National Insurance making the effective rate 26%. In other words non-residents tax rate has been reduced by 9%, which on the face of it should encourage more foreign purchasers in France and will probably drive up prices. Once the 16% has been paid the non-French resident individual taxpayer can have no further French tax liability.

From a tax perspective is French property attractive as an investment?

Yes very much so. The popular perception of France as a high tax country is out of touch with reality. In many cases France is a lower

taxing country than the UK and from a tax point of view an attractive place in which to invest in property. The problem for UK investors is that UK CGT rates are now much higher than French CGT rates as you will see from the example below.

What are the rates if you are not a resident of an EU country?

The rate goes up from 16% to 33.3%. This is subject to any applicable Double Tax Treaty, which may improve the position. If you are not an EU resident and plan to buy a French property you need to think about a suitable EU, and probably French vehicle to buy it in!

Does it matter if you are say an Australian national but a tax resident of the UK?

No, for these purposes the test is tax residency. There is however a surprising sting in the tail for non-EU nationals who live in an EU country and buy a second home in France. Under the new rules non-French residents are exempt from French CGT on any sale of a property provided they have lived in it and been French tax resident for at least 2 years at some time. You do not have to be a French tax resident when you sell the property. You are only allowed this exemption once and you can rent the property provide it is vacant when you sell it.

How does this affect a non-EU citizen (say an Australian) who is a UK taxpayer?

Quite simply this two-year exemption does not apply to them. However, a UK citizen who is an Australian tax resident qualifies! The rule seems illogical and unfair and I would like to hear from anyone faced with this problem.

Any other exemptions?

Yes. You are exempt from French CGT if you are in receipt of an old age pension or are an invalid. This applies even if you are a non-resident. This is subject to some fairly detailed conditions set out in the tax code. There are a number of other more detailed exemptions. The main residence exemption which is similar to the UK one and which can only apply if you are French resident appears below.

How is the gain calculated for individuals?

This is best illustrated by an example (which is one given by the French Revenue). On 20th January 2004 an individual sold a second home he bought 10 years earlier. No

particular exemptions apply. He sold for €20,000 and bought it for €60,980. When he bought the property he had it rewired for €4,753 and changed the Central Heating the following year for €1,206.

Example of French Capital Gain:

	Amount in (€)	Comments
Sale price	120,000	Agent's costs can be deducted. Other deductions are very limited.
Purchase price	60,980	
Purchase costs (7.5% of 60,980)	4,574	7.5% is the default amount. You may be able to claim more.
Works (15% of 60,980)	9,147	Default amount is 15% no proof needed. Otherwise very restrictive and need proof.
Amended purchase price	74,701	
Gross gain (120,000 – 74,701)	45,299	
Reductions (5 years) (5 x 10% = 50% x 45,299)	22,650	You deduct 10% for every year after the 5 th . So after 15 years you pay no tax.
Fixed allowance	1,000	€1,000 always deducted
Net gain 45,299 – (22,650 + 1,000)	21,649	
Taxed at 16%	3,464	French and EU residents pay 16% non EU residents pay 33.1/3%
National Insurance	2,165	French residents only pay this.

Who works out the tax and pays it over?

The notary dealing with the sale. He is required to complete a tax return and work out the gain. He pays the money to the French Land Registry and if there is a problem the land may end up not being registered. There is accordingly a lot of pressure on the notaries and I suspect in practice if they have any doubts they will hold back money due to the seller until matters are clarified. It is up to you to give

him invoices for works. Although not in the legislation the notaries have been told not to allow as a deduction any invoices, which do not have a French VAT number on them. This is a problem for people who have informal arrangements with British builders and suppliers. However, there seems no reason to disallow costs incurred with bona fide British buildings and suppliers who provide an invoice with a British VAT number of it.

Do non-French residents still have to appoint a French Inland Revenue approved tax agent to deal with their tax affairs when they sell?

Previously you had to do this and the notary held back money until your tax affairs were settled. You also had to pay the tax agent's fees which people resented as he was really working for the French Revenue. This was where arguments about deductions of bills for works often took place. This has changed now. If the sale is for less than €150,000 no tax agent is appointed. You simply fill in form 2090 which the notary will have. If the sale price is over €150,000 you still need a tax agent. If you have owned the asset for more than 15 years there is no tax agent regardless of price.

What about a main residence?

Broadly, this is exempt as in the UK. If the property is entirely residential but you run a business from it, it is still exempt. However if parts of the property are used exclusively for business purposes then only the private part qualifies for the exemption.

If I have two properties in France how do they decide which one is my main residence?

Normally it is where you are most of the time. If in doubt it is where you claimed your reduction for taxe d'habitation (local rates) as a main residence.

My house has various outbuildings, which I want to sell separately. Are they exempt?

They can be if the outbuildings are "next to and necessary to" the main private residence. The rules here are different from the UK ones. An important condition for exemptions is that the house must be sold at the same time as the outbuildings though not necessarily to the same person. It is likely to be easier to have it exempt if it is seen as part of the garden rather than a building.

How does this tie in with UK CGT?

It is likely that French CGT will be nil or far less than UK CGT. There are other French CGT exemptions for instance for landlords of furnished properties who have owned them for 5 years. You are taxable in the UK on any French gain if you are resident or ordinarily resident in the UK. There are exemptions from UK CGT for non-UK domiciled individuals who do not remit the sale proceeds to the UK. Similar planning incidentally applies to avoiding UK income tax on the rental income from the French property. Tax planning for UK investors who have seen sharp rises in French property over the last few years focuses on avoiding or mitigating the UK liability. I can assist here though the detail is outside the scope of this article.

It seems unfair that I pay no Capital Gains Tax in France but 40% in the UK. How is the UK gain calculated?

It is agreed that in many parts of France this is a serious problem. Many UK investors in say the Alps have made staggering gains, which are exempt in France but potentially taxable at 40% in the UK. UK CGT is worked out using UK rules. You cannot claim any French exemptions. Taking the example given above the UK CGT in pounds will be calculated as shown in the next Table (£1 = €1.40 used throughout for simplicity):

I want to buy and sell regularly. I also want to divide up land into plots and do some new build.

You are likely to be outside these rules. You are likely to be classified as a Marchand des Biens i.e. a property dealer which puts you under a different (and higher) taxing regime. There is the temptation to try to come within the new rules here but it is high risk. You may get away with it if the development is small and the overall sale price is less than €150,000 so no tax agent is appointed and you have an understanding notary! The best advice is not to chance it. You will probably be better off using a UK company and relying on the UK France double tax treaty.

I am interested in "turning" (i.e. selling a contract on before completion) some new build contracts on a new development of Paris apartments.

With sharp price rises in better Paris postcodes last year and no notary fees investors in this market certainly got sparkling returns! This is a specialist area though the use of an offshore company in a country with a suitable double tax treaty with

France is likely to be the way forward.

Example of UK Capital Gain

	Amount in £	Comments
Sale price	85,715	
Purchase price	43,557	
Purchase costs	3,267	This is the French figure, - it likely to be close to the real figure.
Enhancement costs	6,533	This is the French figure NB. UK Revenue may want actual figures.
Gain before indexation	32,358	
Indexation	43,557 + 3,267 + 6,533 = 53,357 @15% = 8,004	From January 1994 (141.3) to April 1998 (162.6) $\frac{162.6 - 141.3}{141.3} = 15\%$ 141.3
Chargeable gain	24,354	
Taxable gain after non business Taper relief	24,354 @ 80% = 19,483	From 6 April 1998 to 20 January 2004 = 5 complete tax years plus bonus year = 20%.
Annual Exemption	7,900	2003-2004 = £7,900
Taxable gain	19,483 - 7,900 = 11,583	
Charged to CGT	11,583@ 40% = £4,633	Taxed as top slice of income assumes you are higher rate UK taxpayer
Set off French Tax Paid 2,474	Additional payable in UK 4,633 - 2,474 = £2,159	This is the additional amount you pay the UK Revenue.

I understand the new rules only apply to sales of private property as opposed to property used for business purposes. Sales of property used for business purposes are taxed under the business capital gains rules (regime des plus-values professionnelles).

This is correct in most cases.

What is the position if you rent furnished property, which is trade in France, and are taxed under Micro-Bic? Are you within the new rules or the professional regime?

The new rules apply to you so long as you are not a “professional landlord” i.e. have registered with the Commercial Registry and generate a certain income. The rules on taxing professional landlords have changed slightly for 2004 but essentially the property is still exempt from French CGT after 5 years of letting. It is accordingly likely to be better to register as a “professional landlord” but advice in this area is essential.

What happens if I have elected to pay income tax under one of the “Real” regimes rather than Micro-Bic?

This depends on whether you have put the property on your balance sheet (bilan). If you have done this then you will pay CGT on a sale of the property under the professional CGT regime, if not you are likely to be taxed under the new regime.

I understand certain companies and trusts come within these the new Rules and the shareholders or partners are taxed as individuals i.e. the company is transparent for tax purposes. Which ones are they?

Things start getting a bit more complicated here, which also means more good tax planning opportunities, are thrown up! Essentially these are companies, which are not subject to French corporation tax. They are generally viewed as transparent for tax purposes similar to English partnerships. They are called “societes de personnes”. They include SCIs, SARLS which have elected for personal as opposed to corporate taxation and regardless of any election the sole shareholder of a SARL who is an individual. This will extend to non-French companies, which French law classifies as having the requisite characteristics. The new rules cover either a sale of a property by such a company or the sale of shares in such company, which broadly is a property company. There is a problem with SCIs if they, say, carry out furnished lettings, which

is taxed as a trade in France because they cease to be tax transparent.

So the French Revenue looks through the company and taxes the underlying owners of the company direct?

Broadly yes. If the societe de personnes has its registered address (sieve) in France it probably will be French resident under a relevant Double Tax Treaty. The shareholders or partners, whether or not French resident, will be taxed accordingly to their shares as a French resident. No tax agent is needed. This also applies if the partner is not an EU resident. The partner then is only taxed at 16% not 33.3%. This advantage should not be overlooked when structuring non-EU property investment into France.

What happens if the tax transparent company has its registered office outside France?

If the Societe de Personnes has its sieve outside France then this means tax at 33.1/3% is paid if the partner is not an EU resident individual. You pay the 33.1/3% if you are not EU resident even if you are an EU national.

The tax position and different rates are summarised below. Also indicated is whether you need to appoint a French Revenue approved tax agent to finalise your affairs before the notary can release all the sale proceeds to you.

Taxpayer	Rate	French NI	Tax Agent needed? Yes/No
French resident	16%	10%	No
EU resident (any nationality)	16%	0%	No if less than €150,000
Resident outside EU	33.33%	0%	No if less than €150,000

Tax Transparent Company Resident in France with Gains taxed direct on individual Shareholders/partners:

Taxpayer	Rate	French NI	Tax Agent needed? Yes/No
Partner French resident	16%	10%	No
Partner EU resident	16%	0%	No
Partner resident outside EU	16%	0%	No

Tax Transparent Company Resident outside France with Gains taxed direct on individual Shareholders/partners:

Taxpayer	Rate	French NI	Tax Agent needed Yes/No
Partner French resident	16%	10%	No if less €150, 000
Partner EU resident	16%	0%	No if less €150, 000
Partner resident outside EU	33.3%	0%	No if less €150, 000

Non Tax Transparent Companies. i.e. traditional UK opaque company Taxation:

Taxpayer	Rate	Tax Agent needed Yes/No
Resident in France	Applicable Corp tax rate	No
Resident outside France	33.1/3%	Yes, any price

French social security contributions

This section addresses French Social Security contributions and takes the form of an imaginary conversation between a UK national and resident going to work in France and a tax advisor.

Please note specifically that this Q&A section only applies to the relationship between the UK and France, even though this operates within the context of an EU regulation. Other EU countries may interpret the Regulation differently, or derogate from parts of the Regulation.

Why should I care about this?

French social contributions (or *cotisations*) are higher than UK National Insurance contributions (NICs). As a UK resident who is going to work in France, you and your employer may be able to pay UK NICs, which will probably represent a significant saving. Equally if you are thinking of setting up a business in France your liability for self-employed *cotisations* might be far higher than in the UK.

But if I pay in the UK won't I lose my rights to any benefits in France?

Not necessarily – but you have to be careful. An EC Regulation covers this area. Some benefits are withheld if you don't make *cotisations* in France. "Benefits" includes hospital treatment.

What's the underlying principle?

The general principle is that a citizen of any EU country who is in France must be treated in the same way as a Frenchman is. This means that you have their rights, but also their obligations. If you *reside* in France, and start paying their *cotisations*, you can claim in the same way that they can, if you need to. If you prefer to try to pay the lower NICs in the UK, your rights in France may be restricted, as explained below.

So I can't have my cake and eat it?

No. The EU recognises that different member-states have different cultures, which are reflected in their social provision. It wouldn't work, nor would it be fair, if we could all pay *cotisations* in the lowest-taxing country, yet claim benefits when necessary in the most generous.

Does it matter where my employer is situated?

Yes. If your employer is based in France (for example, a company with its registered office in France) and you are working in France, you will always pay *cotisations* in France. It is only if your employer is regarded as UK-based that you can continue to pay NICs in the UK. Your employer must be responsible for your recruitment, your contract of employment, and the nature of your work and be able, if necessary, to terminate your employment.

"Employer regarded as UK-based" ...what does this mean?

In order to stop your employer setting up in low-taxing UK and then sending its employees to France, it must have significant business activities in the UK. If it does not, an interim E101 will be issued. Once this has expired, an extension, if required, may be obtained but the employer must show that it has carried out work in the UK or tendered for contracts in the UK in the meantime.

“Significant business activities” – how do they decide whether my employer has this?

HM Revenue & Customs employs various criteria, including:

- the number of staff in the UK compared to the number in France;
- the place where the majority of contracts with clients are made; and
- the law governing contracts the employer makes.

They have a broad discretion in this area so the above list is only indicative of what they will look at and certainly not exhaustive.

OK, so if my employer is UK-based, and I go to France to work, I pay UK NICs while I'm there, however long?

No. The general rule is that you pay contributions in the country in which you work, irrespective of where your employer is based.

What about if I reside in the UK – say, in Dover – and commute to France every day for work?

It's an unlikely case but even then you will be insured in France. It doesn't matter where you reside. (Of course, this case is far more likely to arise where two member-states of the EU are contiguous and speak the same language – for example, Germany and Austria.) Workers who work in one country but reside in another are called Frontier Workers.

But I thought you said I could work in France and pay in the UK.

I did. This is the important exception, which could save you and your employer large sums. Supposing your UK-based employer, for whom you have previously been working in the UK, sends you to its French office for a period. If this period is intended to last less than 12 months, you continue paying NICs in the UK, even though you are working and residing in France.

Why this exception?

Because it wouldn't be practical to change the regime for people who are going to work abroad for such a short period.

Won't the French demand cotisations anyway? How will they know that I'm only there for a short time?

You have to get a form E101 from HMRC. (Most forms are linked from www.hmrc.gov.uk/cnr/osc.htm#1.) The employer applies for this – don't forget, he

stands to save more in contributions than you do by remaining within the UK system.

HMRC then issues you a certificate confirming that you remain within the UK NI system and that no payments need be made in France. If the French make a demand, show them the certificate. Be aware that you may still be taxed on income, etc., in France. This is outside the scope of this Q&A.

What are forms E104, E106 and E128?

In addition to the E101, these forms may assist you in claiming benefits in France. The E104 sets out your national insurance record in the UK, which may be useful in claiming benefits in France whenever an established UK NICs record is necessary. Forms E106 and E128 provide healthcare cover abroad for you and any family members who accompany you for the period of your employment in France. The E106 is usually issued where the job abroad is more than 12 months at the outset. The E128, by contrast, is usually issued where the job abroad is less than 12 months at the outset and covers the same period as form E101, so should be obtained with it. However, remember that once the E101 has expired, so does the E128.

What happens if I'm in France for longer than 12 months?

If unforeseeable circumstances force you to remain there, you can apply to the French authorities for an extension of up to a further 12 months, but no longer. This covers where, for example, you've been sent to oversee a project, which is supposed to last for ten months but stretches on to fifteen. Your employer has to submit this request on form E102 before the end of the first 12 months. The French authorities may not agree – for example, if they think that your intention was always to stay for more than 12 months. In that case, upon expiry of the E101 you become liable to French *cotisations*. If they do agree to an extension a further E128 will be issued.

Supposing I'm sent to France to replace a colleague who's coming back to the UK at the end of his “tour of duty”. Am I still able to pay NICs in the UK?

No. The periods spent abroad are cumulative. This means that if you are filling the same role, you are treated as the same person and have the same time allowance.

Couldn't I work in France for 12 months, return to the UK to work for a time, and then go back to France for a further 12 months?

Even as someone normally working in more than one state at a time, which is what you would effectively be doing, you would still only be insured in one state. If you regularly work in the UK and France, you are insured in the country in which you reside. In this case you would reside in France as you normally live there.

Why do you use the word "reside"?

Because it has a specific legal meaning. Let's assume that you are ordinarily resident in the UK, in that any time you leave the UK you have a definite intention to return. You will then only become resident in France if you normally live there and you have a settled and regular way of life there. Being indefinitely employed to work in France means you are resident there. This seems to be why, for example, no stay can be longer than 12 months except in unforeseen circumstances, and only then with permission.

Are there no exceptions to this?

Supposing I'm a leading expert in my field and my presence in France will be of great benefit to the French?

The French and the UK authorities can agree either to extend your original period in France to a maximum of 5 years, or to an initial period of more than 12 months, while you remain within the UK system:

- in exceptional circumstances; or
- if you have some kind of special knowledge and skill in your job; or
- if your employer has a special job for you in France; or
- where it is in your interests for you remain within the UK system.

Are all jobs treated in the same way?

No. Exceptions include civil servants, diplomats and members of the armed forces, who remain insured in the UK, for however long they are on a tour of duty abroad.

OK. I go to France to work for less than 12 months (barring unforeseen circumstances) and continue to pay NICs in the UK, under form E101. Since I'm not paying cotisations in France, what are my rights?

Let's divide this into UK rights and French rights. Some UK rights continue while you are in France. It is important to note that you may not qualify for the same level of rights

in France as a Frenchman if you do not pay cotisations there.

Which UK rights continue in France?

The following may continue, subject to your circumstances:

- Jobseekers' Allowance – subject to detailed rules, the most important of which is that you must have been getting it before you leave the UK;
- Maternity benefits;
- Statutory Sick Pay;
- Incapacity benefit;
- Pension;
- Winter Fuel Payments; and
- Widows' and bereavement benefits.

Which French benefits will I get if I pay NICs in the UK?

No application for a benefit can be refused solely because you are not French. Nor can there be any requirement, which indirectly discriminates against foreigners. The rules governing exactly what you can get cover several pages, but in essence, your UK NIC payments might be taken into account in France's assessment of whether, and to what extent, you are entitled to French benefits. Most importantly, the EU Regulation overrides domestic residency tests, whether in the UK or in France. Therefore, in general, you do not have to fulfil any residency requirements before you can get benefits.

Can I get unemployment benefit in France?

Only if you have paid some *cotisations* in France. Therefore, if you have only ever paid UK NICs, you cannot get this benefit. This is to stop so-called benefit tourists from going to the most generous country to claim.

Can you summarise the system?

We'll try. Assuming you are not a Frontier Worker, and you have been posted abroad by a UK employer for a period foreseen to be 12 months or less, you remain insured in the UK. Although you are not therefore resident in France, you are entitled to all French benefits in kind, except unemployment benefit. You can apply for a further period of up to 12 months if the first 12-month period is insufficient. If you stay for longer than the original 12 month period plus any further period you may be granted, and continue to be employed, you have to start paying French *cotisations*.

If I have to pay French cotisations, is there any saving grace?

Yes. You will probably be French resident, so your tax position may be more beneficial than in the UK. Take advice on this – you may save more than you pay for the advice. Your employer may be less circumspect at having to pay French *cotisations*.

What about if I'm self-employed?

Broadly, the same rules apply as to an employed person. If you are:

- normally self-employed in the UK; and
- go to work in France for less than 12 months;
- you can continue to pay in the UK. Form E101 must be completed, as must form E102 if you wish to extend your stay. If you are normally self-employed in the UK and France, you pay where you reside.

UK people buying French property from UK sellers

Please note that taxation and property are complex subjects and you should not take or refrain from taking any step without full independent advice on the particular facts of your case. The content of this here is of a general nature and no liability is accepted in connection with it.

I have agreed to buy a French property for £750,000. The seller and I want to do everything in sterling to avoid currency exchange risk and fees. The notaire has said we have to convert the price to Euros, pay the money through his account and then re-covert back to sterling.

This is the stock answer from most notaires, but it is wrong. There is no obligation on you to actually pay in Euros. The transfer document (*acte authentique*) must however show the price in Euros but you can simply use the exchange rate on the date you and the seller complete the transaction, as set out in the first contract (*compromis de vente*).

So how do we deal with the transfer of funds?

There is no legal obligation on you to pass the funds either through a notaire's account or a solicitor's account. It is sensible to use a solicitor's client account in sterling because otherwise the buyer may not pay you in full. In practice the notaire is under no legal obligation to ensure he has the money in his account. In our view the risks are too high not to use a solicitor in England.

Take me through this stage-by-stage.

Initially the deposit in sterling is paid by the buyer to the buyer's solicitor who holds it in his client account subject to the terms of the French contract (*compromis de vente*). French law governs all the rights and duties under the contract e.g. what happens if one side refuses to complete. The *compromis de vente* can express the price in sterling. The important point is that the contract must have certainty as to price or it may not be valid in French law. This means that the contract must have a formula, which produces a price in euros on the completion date.

What happens once the conditions suspensives (the conditions precedent) in the compromis de vente are satisfied and we are ready to complete?

The balance of the funds in sterling needs to be paid by the buyer to the buyer's solicitors. You will also need to ensure the notaire has all the money in euros he needs to complete. This will include the notaires fees stamp duty and agents fees if the buyer is paying them. The buyer's solicitor holds the money in sterling in his client account until the notaire confirms completion has taken place. He then transfers the money to the seller's solicitor who pays out to the seller. The final transfer document (*Acte Authentique*) is prepared with the price shown in Euros, converted at the exchange rate for the date of completion. The relevant registration fees in France are paid on the basis of this price, so the purchaser assumes some exchange rate risk and will have to pay the notaire a little more in euros to guard against this. The notaire will refund the balance.

What other angles are there?

The notaire cannot complete unless he is sure the seller's tax position is clear. This is because, unlike in the UK, the notaire is under a duty to ensure (*inter alia*) that any French capital gains tax is paid i.e., he withholds French capital gains tax. Before completion, the notaire uses a form to work out the French capital gains tax and lets the seller know the amount due. The seller or the seller's solicitor must send the notaire sufficient funds in euros before completion to ensure the French CGT will be paid.

Can the buyer and seller use the same English solicitor and French notaire?

You cannot both use the same solicitor as English rules prohibit this. You can, however, use the same notaire. Normally, it is strongly recommended that you use separate notaires, but the difficulty of

explaining the above to French notaires means that this is an exceptional case when it is easier for to use a recommended notaire, who understands the mechanism, to act for both buyer and seller. The risks are in any event lower as the seller is in the UK.

What about the seller's mortgages?

This is trickier. Notaires do not “freeze” the Land Registry title as we do in the UK. They pay the mortgage off after completion and have an insurance policy, which pays out in the unlikely event of a seller fraudulently mortgaging the property just before completion. The notaire’s insurance policy only pays out if all monies have gone through his account so there is some risk here, as the monies will not have gone through his account because they stayed in the UK in sterling. In practice the notaire has to have a copy of the registered mortgages from the French Land Registry, which is not more than 2 months old at the date of completion. This can be renewed but it is difficult to have one less than 2 weeks old at completion. There is a small risk the seller could mortgage the property shortly before completion, which would not be known to the notaire. The risks of this are however low but neither the notaire nor the solicitor will accept this risk. Insurance in the UK may be available to protect you against the risk.

Further Information

Particular attention is drawn to the sidebar note on page 1 as to the use of information provided in this publication since the information stated has not ben updated since 2008.

This guide is for general interest - it is always essential to take advice on specific issues. We believe that the facts are correct as at the date of publication, but there may be certain errors and omissions for which we cannot be responsible.

If you would like to receive further information about this subject or other publications, please call us – see our contact details on the next page.

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