

RELOCATION, RELOCATION, RELOCATION



If certain individuals are tempted to quit the UK for tax reasons, where will they go? *Edward Jennings* profiles one potential destination

The confirmation of various tax and national insurance increases in the pre-Budget report, allied with the introduction of a 50% income tax rate in the UK from 6 April 2010, has inevitably led some individuals to consider leaving the UK. Tax is one of many issues a potential émigré needs to consider. One preferred location has historically been the Principality of Monaco. I shall summarise its tax regime here.

The Principality of Monaco is a constitutional monarchy located 20 miles east of Nice, France. It is the second smallest state in the world, covering an area of approximately 0.75 square miles. The Grimaldi family has ruled the Principality since 1297, and Prince Albert II succeeded as head of state in 2005 following the death of his father Prince Rainier III. The Principality has a population of approximately 35,000, and the British expatriate

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community is the third largest. Monaco is a civil law jurisdiction and the official currency is the euro. Monaco is not a member of the European Union (EU). French is the official language, but English and Italian are widely spoken.

Income tax and CGT in Monaco

Residents of the Principality do not pay income tax on Monegasque-sourced income or capital gains tax on Monegasque-sourced gains (except in certain circumstances – see business tax rates).

Moving to Monaco

There are a number of formalities to complete in order to live or work in Monaco.

Monegasque residency permit

An EU citizen (or citizen of Norway, Iceland, Liechtenstein or Switzerland) who intends to remain in the Principality for more than three months must apply to the Monegasque authorities for a residency permit. An applicant must attend the offices of the Direction de la Sûreté Publique, obtain and submit the relevant paperwork and return for an interview. If successful, the individual will receive a temporary residency permit (valid for a year and renewable each year for the first two years).

Applicants should be able to provide evidence that they can support themselves financially. This may be illustrated by an offer of employment in the Principality or a bank certificate.

A Monegasque residency permit is valid for Monaco only and does not guarantee that other states will not consider an individual tax-resident in the other country under the applicable local laws.

Monegasque residency status

An individual needs to spend sufficient time in the Principality to establish and maintain Monegasque residency. The risk is that an individual who travels extensively or has a wide range of international business interests, or for some other reason, will

inadvertently be considered tax-resident in another jurisdiction, eg, the UK under the relevant local laws. It is therefore important that detailed records are kept of days spent outside the Principality (eg, retaining boarding cards, credit card receipts and similar records of presence) and that a pattern of movement is established which confirms Monegasque residency. This will help deal with any potential query that tax authorities in other jurisdictions may make (although readers will be aware that day-counting is not a determining factor with respect to UK residency). It is possible to obtain a certificate from the Monegasque Police confirming residency in the Principality, which is accepted by the French and Italian tax authorities as proof of residence.

Monegasque work permit

Anybody wishing to work in Monaco must apply for, and obtain, a Monegasque work permit by complying with the local formalities. A submission should include a completed application form, contract of employment and evidence of a fixed address in Monaco (or for non-residents, evidence of an address in the immediate surroundings). There are no quotas on the hiring of foreign nationals, but the Monegasque government gives priority to nationals and residents of Monaco. Applicants must attend a medical.

Social taxes

Social taxes (analogous to social security contributions in the UK) are payable by employees, employers and self-employed persons in Monaco. The average rate for employees is approximately 13% and for employers 33%-35% (the exact rate will depend on a number of factors, including salary and the range of benefits that the employer offers).

Civil law jurisdiction and forced heirship rules

As Monaco is a civil law jurisdiction, the rules of forced heirship apply. These

rules often come as a surprise to individuals with a common law background. Essentially, the rules (which can in certain circumstances be defeated) restrict a testator's ability to decide how his assets should be distributed after death. For example, where an individual with two children dies, 50% of the deceased's estate (25% each) is reserved for the children under the forced heirship rules.

Law 214 trust

Monaco, probably uniquely in this way for a civil law jurisdiction, officially recognises some forms of trust. The relevant law (Law 214) enables individuals from a common law background to transfer trusts to Monaco or set them up in the Principality. This may be useful for individuals who wish to defeat the forced heirship rules or otherwise organise their affairs using a trust structure. Law 214 is subject to a requirement that the law of the individual's country of nationality permits a trust to be created, and that the trust is usually constituted under that country's trust law. A full analysis of Law 214 is beyond the scope of this article, but it is worth noting that there are planning opportunities using trusts in Monaco.

Monegasque inheritance tax

Monegasque inheritance tax is payable in Monaco on Monegasque situs assets only at a maximum rate of 16% (0% for transfers between spouses and parent and children).

UK inheritance tax

Establishing a domicile of choice in Monaco is difficult for many expatriates because they retain links with the UK. As readers will be aware, a UK-domiciled individual remains liable to UK inheritance tax on their worldwide assets.

Family Offices

It is perhaps not surprising, given the number of wealthy individuals who live in the Principality, that there is substantial professional expertise and

support available locally for Family Office structures.

There are many different types of Family Office, but essentially such a structure enables high net-worth individuals to organise their financial affairs with a high degree of confidentiality and control.

Business structures and licences

There is no concept of an 'off the shelf' company in the Principality. It is not possible to carry out a commercial activity in Monaco without first obtaining the appropriate licence. A wide range of business structures is available in Monaco. The basic company model is the Société Anonyme Monégasque (SAM), which is a limited liability company. The incorporation of a SAM (or any other business-related activity) requires the prior approval of the Monegasque authorities. And although those authorities are keen to encourage commercial activity in the Principality, applicants are required to provide detailed information about the type, ownership and funding of the proposed business. The level of due diligence conducted by the local authorities is much greater than that carried out in many other jurisdictions, eg, Delaware, US.

The most popular form of business entity in the Principality is the Société Civile. Although it does not require prior approval, the range of activities it can carry out is limited to civil rather than commercial activities. Civil activities include managing your own money and building work.

Business tax rates

Business tax is levied at a rate of 33.33% on net profit regardless of the legal form of the business. This may appear relatively high, but there are a number of important exceptions. Business tax only applies to:

- net profit, ie, after all expenses (including remuneration) have been taken into account;
- situations where more than 25% of the turnover of the business is generated outside the Principality (this effectively means that businesses with substantial Monegasque-sourced revenue are exempt from tax);

- certain business and professional activities are wholly exempt.

Just like any other sovereign state, the Principality of Monaco determines the most appropriate tax regime for its economy. The Monegasque authorities are keen to develop certain types of commercial activity and industries within the Principality, and the tax regime assists with attaining these objectives.

The financial services industry in Monaco is subject to its own regulatory authority and relevant legislation.

Renting or buying property in the Principality

A transfer tax is payable on the purchase of real estate at a rate of 7.5%. Notaries' fees also apply. A 1% stamp duty applies on residential rents. Estate agents usually charge finder's fees for finding rental property.

Filing tax returns in Monaco

There is no concept of a personal tax return in Monaco (except for business tax). Where taxes are payable (eg, property transaction) any tax due is usually collected and paid over by the Monegasque notaire acting on the transaction. Businesses are required to complete accounts and tax returns in the usual way.

Tax Information Exchange Agreements

In April 2009, the OECD recognised Monaco as a jurisdiction that had adopted OECD standards on exchanging tax information but had not yet substantially implemented them. During 2009, Monaco signed 13 Tax Information Exchange Agreements (TIEAs) and a double tax treaty with Luxembourg, which enabled Monaco to demonstrate that it had implemented the OECD standards on exchanging tax information. The Principality is on the OECD white list.

Value added tax

There is a Customs Union for VAT, between France and the Principality. EU VAT rules therefore apply in Monaco, subject to a number of exceptions. The standard rate is currently 19.6% and the reduced rate is 5.5%.

Living in Monaco and owning real estate in France

Many residents of Monaco own property in France. There are three French taxes that can trap the unwary:

French wealth tax – non-French residents with total net French assets exceeding €790,000 as at 1 January 2010 should consider whether they have an annual tax liability under the French wealth tax regime.

Article 164c French Tax Code – broadly, under this article, an income tax liability based on three times the notional annual rental value of the property may be payable by an individual who is not protected by an appropriate non-discrimination clause in the relevant double tax treaty.

3% tax – All French and foreign legal entities that directly or indirectly own real estate in France are subject to an annual tax of 3% of the property's fair market value unless they are expressly exempted.

It is important therefore that any purchase of property in France is, where possible, structured so as to minimise the three French taxes summarised above.

Living in France and working in Monaco

An individual may live in France and work in Monaco. Any income derived from the Monegasque employment will be subject to French income tax.

Monaco offers many financial and commercial advantages to those wishing to relocate from the UK. In addition, integration is eased by the size of the local British community and the many Anglophile associations. Monaco has an excellent education system (including the International School and university), communication and transport links.

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Further information about the Principality of Monaco is available from the Monaco Consulate in London at www.monaco-consulate-uk.gouv.mc