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The International Comparative Legal Guide to:

Private Client 2014

3rd Edition

A practical cross-border insight into private client work

Published by Global Legal Group, in association with CDR, with contributions from:

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GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Information Press Ltd
December 2013

ISBN 978-1-908070-83-8
ISSN 2048-6863

Strategic Partners

ECLA – European Company Lawyers Association

MIX Paper from responsible sources FSC® C013262

General Chapters:

Country Question and Answer Chapters:

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Owen Clutton and Jonathan Conder of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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Chapter 30

Monaco

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1 Pre-entry Tax Planning

1.1 In Monaco, what pre-entry estate and gift tax planning can be undertaken?

Monaco levies estate and gift tax on a territorial basis. Any Monegasque located or deemed located assets are in the scope of estate and gift tax.

In order to avoid gift and estate tax, one has to ensure that any assets are neither located in Monaco nor deemed to be located there, or that the beneficiary is an individual who is not liable for such estate and gift tax (spouse and lineal relatives only).

For instance, it is quite frequent that a Monaco located asset is owned through a non-resident entity or company. However, since 1 July 2011, offshore and so-called "opaque" entities (non-Monaco civil companies owned by individuals) owning Monaco real estate may potentially be liable for the payment of a 4.5% transfer tax assessed on the fair market value of the underlying asset, if there is a change in their beneficial ownership where the beneficiaries are neither a spouse nor a lineal relative.

1.2 In Monaco, what pre-entry income tax planning can be undertaken?

As there is no income tax in Monaco, no pre-entry planning to Monaco is required.

1.3 In Monaco, can pre-entry planning be undertaken for any other taxes?

There are no relevant taxes for which pre-entry planning is necessary, other than estate and gift taxes (see above) in limited circumstances.

2 Connection Factors

2.1 To what extent is domicile relevant in determining liability to taxation in Monaco?

Domicile is not relevant to determine liability to taxation in Monaco.

2.2 If domicile is relevant, how is it defined for taxation purposes?

This is not applicable.

2.3 To what extent is residence relevant in determining liability to taxation in Monaco?

Residence is not relevant to determine liability to taxation in Monaco.

2.4 If residence is relevant, how is it defined for taxation purposes?

This is not applicable.

2.5 To what extent is nationality relevant in determining liability to taxation in Monaco?

Nationality is not relevant to determine liability to taxation in Monaco.

2.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable.

NB: In respect of all the answers in section 2 above, French citizens resident in the Principality of Monaco are still considered as French residents for tax purposes. As a consequence, and despite their Monaco residency, they are subject to French income tax/capital gains tax/wealth tax/gift tax/estate duty in France in certain circumstances which will not be addressed in this chapter.

3 General Taxation Regime

3.1 What gift or estate taxes apply that are relevant to persons becoming established in Monaco?

As already explained above, gift and estate taxes are not levied by reason of a person becoming "established" in Monaco but by reason of the location of the assets.

Gift and estate taxes only apply on assets which are located or deemed located in Monaco.

Gift and estate taxes apply at rates ranging from 0 to 16%. The rate of 0% applies where the recipient of the assets is a spouse or a lineal relative of the donor/testator.

The rate of 16% applies to gift and legacies made in favour of an unrelated party.

Various intermediate rates apply where the recipient is related to the donor/testator (8%, 10% and 13% depending on the degree of relationship).

3.2 How and to what extent are persons who become established in Monaco liable to income tax?

There is no income tax in the Principality of Monaco.

3.3 What other direct taxes (if any) apply to persons who become established in Monaco?

No other direct taxes apply.

3.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in Monaco?

Monaco is deemed to be part of the French territory for VAT purposes. The same applies for customs and excise duties. An individual will pay VAT on goods and services at the same rates as French individuals (primarily at the standard rate of 19.6%).

Reduced rates of VAT may apply to certain types of goods and services (e.g., restaurant services) as in France.

3.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in Monaco?

There are no anti-avoidance taxation provisions applying to offshore arrangements of persons who have become established in Monaco.

3.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

This is not applicable.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to direct taxes on the remittance of assets or funds into Monaco?

There are none.

4.2 What taxes are there on the importation of assets into Monaco, including excise taxes?

Importation and intra-community delivery of assets into Monaco gives rise to VAT at the rate of 19.6% (standard French VAT rate).

4.3 Are there any particular tax issues in relation to the purchase of residential properties?

Purchase of Monaco properties by an individual or through a Monaco civil company entails the payment of a 4.5% transfer duty. Purchase through a corporate or offshore entity entails the payment of a 7.5% transfer duty. In any case, the purchaser will also have to pay notary fees at the rate of 1.5%.

5 Succession Planning

5.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in Monaco?

In terms of succession to an individual's estate, on his/her death the first issue is to determine whether the Courts of Monaco have jurisdiction. Jurisdiction arises where an estate is "opened" in the Principality of Monaco and where Monaco real estate is owned directly by the deceased individual. An estate will be opened in Monaco where a deceased individual is usually domiciled in the Principality at the time of his death.

The law currently applied by the Courts of Monaco (the law may change in the near future as a bill aiming at reforming Monaco International Private Law is currently under examination before the Monaco Parliament) is as follows:

- Monaco law applies to Monaco-located real estate owned directly by the deceased; and
- Monaco applies the national law of the deceased to movable estate (personalty).

Depending upon the conflict of law rules prevailing in the country of nationality of the deceased, there will either be direct application of the national law in Monaco (for Italian citizens merely), or a *renvoi* from the national law of the deceased's country to the law of last "domicile" (which is the private international law/conflict of law rule prevailing in England and Wales, for example) such that such a person dying "domiciled" in Monaco will find that his/her estate is then governed by Monegasque law (Monaco accepting the *renvoi*).

The form of wills allowed by the Monaco Civil Code respect the classic civil law forms: holographic; mystical; and "authentic" (i.e., made before a Monaco notary). However, it is also customary to treat as valid (for formal purposes) a will made in "national" form.

5.2 Are there particular rules that apply to real estate held in Monaco or elsewhere?

If a Monaco property is held directly by the deceased in his/her own name, then Monegasque law will apply to it. If the deceased owned directly a property in another country, then the inheritance law of this country will apply.

It is only if that foreign property is held through, say, a company and the nature of that company is to render the deceased's rights to be of a movable nature that Monegasque law would then prevail over the devolution of that real estate (see above).

NB: the Monaco Parliament is currently discussing a bill which could potentially entail the application of a single inheritance law to an estate (e.g., a foreign person's "national" law might extend even to Monegasque real estate) upon election prior to the death (*Professio Juris*).

6 Trusts and Foundations

6.1 Are trusts recognised in Monaco?

Yes, with effect from September 2008, Monaco has adhered to the Hague Convention on the Law Applicable to Trusts and on their Recognition.

6.2 If trusts are recognised in Monaco, how are they taxed in Monaco?

There is no specific tax applicable to trusts in the Principality (with one exception, see below), as there are no direct taxes in the Principality.

However, an exception to this may involve Monaco-located real estate which, if held via a corporate entity which itself is held by trustees of a foreign trust, gives rise to a 4.5% transfer tax in case of change of beneficial ownership of such an entity. Please note that addition or withdrawal of beneficiaries to a trust indirectly owning a Monaco property is considered as a change of beneficial ownership by the Monaco tax authorities, thus entailing the payment of a 4.5% transfer tax assessed on the entire fair market value of the property.

Monaco Law 214 allows certain individuals to make trusts which will be enforced before the Monaco courts. This legislation is distinct from the effects of the Hague Convention to which allusion is made above. Monaco Law 214 Will Trusts are deliberately entered into by individuals who wish to get rid of Monaco forced heirship rules and/or who wish to cloak their estates with common law executorships arrangements. In this specific context, a Law 214 duty arises on the contribution of assets. The duty varies depending upon the number of beneficiaries named in the Law 214 trust:

- 1.3% if one beneficiary;
- 1.5% if two beneficiaries; and
- 1.7% if three beneficiaries or more.

6.3 If trusts are recognised, how are trusts affected by succession and forced heirship rules in Monaco?

A distinction must be made between, on the one hand, trusts made in the conventional way in some foreign jurisdiction which are recognised in Monaco under the Hague Trusts Convention (see above); and those trusts specifically made in accordance with Law 214 (see above).

It is possible that trusts not made with the protection of Law 214 will, to some extent, be affected by Monegasque succession and forced heirship rules if such rules apply to the estate of the deceased individual who is a settlor of such a trust. In accordance with standard civil law principles, when an estate is analysed on death, the extent of the estate comprises not only those assets in the control of the deceased at the time of his death, but also any assets that the deceased may have owned and sold at an undervalue or given away (e.g., given away to a trust). Typically the value of such assets will be brought back into account to create a fictional value of the deceased's estate, and reserved heirs may have rights to consider that they are entitled to some part of that fictional value. In certain circumstances, these rights might translate into an order to claw back assets transferred previously to such an offshore trust.

Conversely, Law 214 is designed to allow certain individuals (i.e., nationals of common law jurisdictions merely) to import their national succession law by filing a Will Trust, and thereby to avoid the effects of forced heirship claims from reserved heirs (children merely).

This requires the execution of a trust deed (a Will) before a Monaco notary; obtaining a certificate from a duly qualified attorney whose name is held by the Court of Appeal of Monaco; and appointing a corporate trustee whose name has been approved by the Court of Appeal of Monaco.

6.4 Are foundations recognised in Monaco?

Foreign Private foundations will normally be recognised in the Principality. Monaco domestic law itself allows the creation of Monaco foundations but the latter may only be of Public or Charity interest, not Private ones; requires government prior consent in order to exist; and the payment of a duty assessed on the amount of the foundation capital.

6.5 If foundations are recognised, how are they taxed in Monaco?

Given the absence of any specific taxes relating to foreign foundations, and of any direct tax in Monaco, it is unlikely that a foreign foundation will be subject to any tax, except potentially the 4.5% transfer tax applicable in case of change of its beneficial ownership should the foundation directly or indirectly own a property in Monaco.

6.6 If foundations are recognised, how are foundations affected by succession and forced heirship rules in Monaco?

Foreign foundations will be subject to the same principle that any gift made to individuals during a deceased person's lifetime may be arguably clawed back (see question 6.3, above, for this principle).

Gifts to foundations do not enjoy any specific protection similar to Law 214 (see above) in the context of trusts. As a consequence, a gift of a Monaco-located asset to a foundation may trigger the 16% gift tax.

7 Immigration Issues

7.1 What restrictions or qualifications does Monaco impose for entry into the country?

Monaco is a sovereign state which legislates for entry and residence into the country. However, as a consequence of a Treaty with France, and given that no "visas" are issued by the Principality in Monaco, the role of which is delegated totally to the French state, any application for Monaco residency effectively is subordinated to a visa granted by France. The process for becoming a resident of the Principality differs depending upon the nationality of the applicant. If the applicant is a citizen of an EU Member State, plus Iceland, Liechtenstein, Norway or Switzerland, then the residency application is made directly by the individual in Monaco with the Monaco police. If a citizen of some state not included in the above list is concerned, his/her application is usually initiated through the French Consulate in the country where he/she is residing at the time of the application.

In all cases, ultimately the decision to allow an individual to become a resident of Monaco resides with the Government of Monaco, and that decision is discretionary (Monaco is not a Member of the EU, hence no rights of establishment exist for any foreign persons).

A Monaco residence card entitling the individual to spend in excess of three months in any 12-month period in Monaco is granted by the Monegasque authorities after enquiries have been made and the applicant has attended an interview.

Applicants must be sufficiently wealthy to live in the Principality of Monaco and must present to the immigration authorities proof of:

- an appropriate dwelling in which to live (which they either rent or have acquired); and

- a clean certificate of criminal records issued by the places where they have resided.

7.2 Does Monaco have any investor and other special categories for entry?

No, it does not.

7.3 What are the requirements in Monaco in order to qualify for nationality?

Nationality is not something which an individual is entitled to obtain, except in very restricted circumstances (notably when marrying another Monegasque citizen). Nationality is the privilege of the reigning Prince to grant to the applicant. In becoming Monegasque, an individual must normally renounce other nationalities.

7.4 Are there any taxation implications in obtaining nationality in Monaco?

No. Monegasque nationals are taxed no differently than non-Monegasque nationals residing in Monaco.

NB: French citizens who renounce their French nationality and take up Monegasque nationality will cease being liable to French income/capital gains/wealth and other taxation in France which may have attached to them by reason of their French nationality if resident in Monaco.

8 Taxation of Corporate Vehicles

8.1 What is the test for a corporation to be taxable in Monaco?

A corporation is liable to corporate income tax in Monaco if it operates a "commercial" or an "industrial" activity in or from Monaco. The standard corporate income tax rate is 33.33% of the net taxable profit. However, if the corporation realises more than 75% of its turnover in the Principality itself, it will be out of the scope of corporate income tax. Reciprocally, as far as more than 25% of the corporation turnover is realised outside the Principality, then the entire net tax profit of that corporation is taxable at the rate of 33.33%.

8.2 How are branches of foreign corporations taxed in Monaco?

Branches of foreign corporations are taxed in the same way as Monegasque corporations, to the extent that the branch activity exceeds the 75%/25% rule referred to above, and this presupposes that the activity is either commercial or industrial and a profit can be allocated to the Monaco activity.

In certain circumstances where a profit cannot be allocated to a branch activity, a "headquarter" specific tax regime may be obtained from the Monegasque tax authorities whereby corporate income tax is assessed on the basis of 8% of the corporation annual running expenses (2.66% effective tax rate).

9 Tax Treaties

9.1 Has Monaco entered into income tax and capital gains tax treaties and, if so, what is their impact?

Monaco has entered into a number of Double Tax Treaties covering both income tax and capital gains tax. It is to be remembered that no income tax and capital gains tax arise in Monaco so such Treaties are relevant to the other Treaty country, rather than in Monaco itself.

These countries would include Luxembourg, the Seychelles, St. Kitts & Nevis, Qatar, Mali, and Mauritius. Monaco has also entered into a Double Tax Treaty with France but the terms of this Treaty are very different from the standard OECD treaty ones, due to the very special relationship which exists between the Principality of Monaco and its neighbour France. The terms of this Treaty mainly concern French and Monegasque nationals.

It also has to be pointed out that Monaco has entered into negotiation with the UK and Italy for the conclusion of tax information exchange agreements (TIEAs).

9.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The six other Double Tax Treaties referred to above generally follow the OECD model.

9.3 Has Monaco entered into estate and gift tax treaties and, if so, what is their impact?

Monaco has not entered into estate and gift tax treaties with any countries except France (for succession only). Special rules exist to determine how tax may arise in France but only to the extent that a French citizen or a Monegasque citizen is involved.

9.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The Monaco inheritance tax Treaty with France does not follow any model and is very specific to the special circumstances which exist between France and Monaco, and specifically French citizens who are resident or who own assets in the Principality of Monaco.

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Alexis concentrates on taxation of individuals and businesses, and monitors on-shore and off-shore entities on behalf of private clients. Before joining Gordon S. Blair, he was previously a tax adviser with a French law firm and a Single Family Office in Paris, and pursued his career in Monaco with a Multi Family Office.

Alexis currently advises UHNWI on their French and Monegasque real estate investments and acts as general counsel for several Monaco-based Single Family Offices. He is also involved in the setting-up of a group of companies in Monaco, as well as in the disposal of businesses.

Alexis has extensive experience in taxation, estate planning, real estate law & transactions, and relocation to Monaco.

Alexis holds a Master's Degree in corporate tax law from Paris-Dauphine University and is fluent in English and French.

He is also a registered member of the Society of Trust & Estate Practitioners (STEP Monaco Branch) and an authorised tax representative with the Monaco tax authorities.

Areas of practice:

- Personal & Corporate Taxation
- Real Estate Transactions & Tax Planning
- Acquisition of High Value Personal Assets
- Relocation to Monaco
- Family Office services

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Previously a tax lawyer with Baker & McKenzie in Paris, Christophe Kosman has developed a particular expertise in advising and assisting international families in the structuring of their assets and activities.

His main fields of intervention may be classified under the following two headings:

- Family governance, dispute management and resolution: family charter, arbitration, pre-nuptial agreement.
- Legal and tax asset-structuring and estate-planning in the context of family oriented projects: family holdings, trusts, foundations, private funds, etc.

Strongly involved in the implementation and follow-up of the solutions elaborated and retained by close collaboration with his clients, Christophe Kosman acts as General Counsel for various private trust companies.

Attorney at law Christophe Kosman holds an LL.M. from the University of Texas and is a graduate of the Paris Law School.

Areas of practice:

- Corporate Finance
- Family Offices
- Family-Owned Businesses
- Fund Managers & Asset Managers
- International Tax Law and Planning
- Special projects
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