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1 Pre-entry Tax Planning

1.1 In your jurisdiction, 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 your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

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

1.3 In your jurisdiction, 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 or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile or habitual residence is not relevant to determine liability to taxation in Monaco.

2.2 If domicile or habitual residence 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 your jurisdiction?

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 your jurisdiction?

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.

N.B.: 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.

2.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?

There are no other connecting factors.

3 General Taxation Regime

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

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 your jurisdiction 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 your jurisdiction?

No other direct taxes apply.

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

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 20%).

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 your jurisdiction?

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 tax on the acquisition, holding or disposal of, or receipt of income from investments in your jurisdiction?

There are none.

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

Importation and intra-community delivery of assets into Monaco gives rise to VAT at the rate of 20% (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 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A corporation is liable to corporate income tax in Monaco if it operates a "commercial" or "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%.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The main tax liabilities payable by a corporation in Monaco is the corporation tax, provided the corporation falls within the scope of it (as explain above).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

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).

6 Tax Treaties

6.1 Has your jurisdiction 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 gain 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, Mauritius and Guernsey. 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).

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

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

6.3 Has your jurisdiction 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.

6.4 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.

7 Succession Planning

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

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 law rule prevailing in England and Wales, for example) such that 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.

7.2 Are there particular rules that apply to real estate held in your jurisdiction 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 directly owned 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).

N.B.: 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*).

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

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

8.2 How are trusts taxed in your jurisdiction?

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.

8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

A distinction must be made between 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.

8.4 Are foundations recognised in your jurisdiction?

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 and requires government prior consent in order to exist and the payment of a duty assessed on the amount of the foundation capital.

8.5 How are foundations taxed in your jurisdiction?

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 a change of its beneficial ownership should the foundation directly or indirectly own a property in Monaco.

8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

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.

9 Matrimonial Issues

9.1 Are civil partnerships/same sex marriages permitted/ recognised in your jurisdiction?

Currently the civil partnership of same-sex is not permitted nor recognised in Monaco. However the Monaco National Council may study a draft proposal of law aimed at creating a civil partnership during the 2016 public session. The law could, hypothetically, become effective in 2017. According to the wording of the proposal of law, civil partnership might be recognised in Monaco as a type of contract that individuals are free to conclude. However, the interpretation with regard to the civil rights of the partners remain unclear especially regarding the consideration of the civil partners as potential heirs at the same level as a surviving spouse.

9.2 What matrimonial property regimes are permitted/ recognised in your jurisdiction?

In the jurisdiction of Monaco there are two matrimonial property regimes.

The legal matrimonial property regime is the regime of separation of assets, so if spouses do nothing, this regime (separation) is automatically applied.

However, they can choose to make a contract with a notary in order to create a full community property regime.

The jurisdiction of Monaco also recognised the foreign regime when the wedding complies with the law where the wedding was held.

Monaco offers the possibility for spouses, in the case where one of them is foreign citizen, to choose the applicable law of the country of citizenship.

9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

In the jurisdiction of Monaco it is entirely possible to make a marriage contract. In order to be recognised by the jurisdiction of Monaco it is necessary for it to be drafted before a Notary. This contract allows spouses to choose the full community property regime.

9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

The main principle is to maintain the same level of lifestyle that the spouse had during the marriage (in the event one of the spouses does not have any income).

10 Immigration Issues

10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Monaco is a sovereign state which legislates for entry and residence in 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.

10.2 Does your jurisdiction have any investor and/or other special categories for entry?

No, it does not.

10.3 What are the requirements in your jurisdiction 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 the applicant. In becoming Monegasque, an individual must normally renounce other nationalities.

10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

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

N.B.: 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.

10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

There are no special programmes designed to attract foreigners to become resident in Monaco.

11 Reporting Requirements/Privacy

11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Monaco has signed 23 exchange of information agreements and 16 are already entered into force with countries likes USA and Australia.

11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Domestic law does not impose any reporting requirement in respect of structures outside Monaco with which a Monaco resident is involved.

11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

There are no public registers where it would be possible to find this information.

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Alexis advises Private Clients on their tax and estate planning, and monitors their on-shore and off-shore real estate investments. 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 local Corporate Service Provider. Alexis also acts as general counsel for several Monaco-based Single Family Offices. He is also implied in the setting-up of group of companies in Monaco, as well as in the purchase and disposal of businesses. Alexis has extensive experience in taxation, estate planning, real estate 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:

- Tax & Estate Planning.
- Real Estate Transactions.
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GORDON S. BLAIR

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