



ICLG

The International Comparative Legal Guide to:

Private Client 2017

6th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the sixth 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:

Nine 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 28 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 Jonathan Conder and Robin Vos 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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Monaco

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Alexis Madier



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

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

There is no income tax and no capital gains tax in Monaco. As such, no pre-entry planning is required in relation to these taxes.

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 in determining 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 in Monaco.

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

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

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

This is not applicable in Monaco.

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

Nationality is generally not relevant in determining liability to taxation in Monaco, with one exception: French citizens who are Monegasque residents are still considered as French residents for tax purposes (with certain exceptions). As a consequence, they are subject to French income tax/capital gains tax/wealth tax/gift tax/estate duty in France.

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

French nationality is defined for French tax purposes by the French authorities.

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

This is not applicable in Monaco.

3 General Taxation Regime

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

Gift and estate taxes are only levied if the relevant assets are located (or deemed located) in Monaco.

The applicable gift and estate tax rates range from 0 to 16%. A 0% tax rate applies where the recipient of the assets is the 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.

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

3.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

There is no income tax or capital gains tax in the Principality of Monaco.

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

This is not applicable in Monaco.

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 a part of the French territory for VAT purposes, as well as for customs and excise duties. As such, an individual will pay VAT on goods and services at the same rates as French individuals.

The standard VAT rate is 20%.

Reduced rates of VAT may apply to a certain type of goods and services (e.g. restaurant, food and certain building works). The intermediary rate is 10% and the reduced rate is 5.5%.

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 in Monaco.

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% (the standard French VAT rate).

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

The purchase of residential real estate in Monaco by an individual or through a Monegasque civil company triggers a 4.5% transfer duty. Purchasing Monegasque residential properties through a corporate or offshore entity triggers a 7.5% transfer duty.

In both cases, 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 form or type of the corporation is irrelevant. The standard corporate income tax rate is 33.33% of the net taxable profit.

However, if the corporation generates more than 75% of its turnover from activities carried out in Monaco, the corporation will be out of the scope of corporate income tax.

Importantly, if more than 25% of the corporation turnover is generated from activities carried on outside the Principality, the entire net tax profit of that corporation (Monegasque-sourced income included) 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 liability payable by a corporation in Monaco is the corporation tax (provided the corporation falls within its scope in a given financial year).

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

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

In certain circumstances where a profit cannot be allocated to an activity of the branch, 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’s annual running expenses (i.e. an effective tax rate of 2.66%).

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 limited 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. As such, these Treaties are only relevant to the other Treaty country.

These countries include Luxembourg, the Seychelles, St. Kitts & Nevis, Qatar, Mali, Mauritius and Guernsey.

Monaco has also entered into a Double Tax Treaty with France; however, the terms of this Treaty do not follow the standard OECD model treaty, due to the very special relationship which exists between Monaco and France. The terms of this Treaty are mainly relevant to French and Monegasque nationals.

It also has to be pointed out that Monaco has signed tax information exchange agreements (TIEAs) with the UK and Italy, though the latter has not entered into force yet.

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

All the Double Tax Treaties referred to above follow the OECD model, except for the treaty with France.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

Monaco has entered into only one estate and gift tax treaty, with France (for succession purposes only). Special rules determine on which basis tax may be levied 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 Inheritance Tax Treaty between Monaco and 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 Monegasque residents or who own assets in 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?

Regarding successions, the first issue following the passing of the individual is to determine whether or not the Monegasque Courts will have jurisdiction, and if not, which country does. The Monegasque Courts will have jurisdiction if an estate is “opened” in the Principality of Monaco and if the estate includes Monegasque real estate assets directly owned by the deceased. The succession proceedings will be engaged in Monaco if the deceased is usually domiciled in the Principality at the time of their death.

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

- the Monegasque law applies to Monaco-located real estate owned directly by the deceased; and
- Monaco applies the national law of the deceased to movable assets.

Depending on the conflict of law rules prevailing in the country of nationality of the deceased, there will either be a direct application of their national law in Monaco, or a *renvoi* from the national law of the deceased’s country to the law of last “domicile”, such that a person dying whilst “domiciled” in Monaco will find that their estate is then governed by Monegasque law (as Monaco will accept the *renvoi*).

The wills allowed by the Monegasque Civil Code follow the classic civil law forms: holographic; mystical; and “authentic” (i.e. made before a Monegasque notary). However, it is also customary to treat as valid (for formal purposes) a will made in a form accepted in the legislation of their country of nationality.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

If a Monegasque property is held directly by the deceased in their 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 foreign property is held indirectly through a company and the nature of that company is to render the deceased’s stakes to be of a movable nature, that Monegasque law will prevail for this real estate asset (see above).

N.B.: The Monegasque Parliament is currently discussing a bill which could potentially result in the application of a single inheritance law to an estate (e.g. a foreign person’s “national” law might extend to Monegasque real estate) if the deceased made such an election prior to their death (the *Professio Juris* principle).

8 Trusts and Foundations

8.1 Are trusts recognised in your jurisdiction?

Yes: with effect from September 2008, Monaco has observed the principles of 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 two exceptions, see below), as there are no direct taxes in the Principality.

However, an exception to this involves Monegasque-located real estate which, if held via a corporate entity which itself is held by the trustees of a foreign trust, gives rise to a 4.5% transfer tax in Monaco, upon the change of beneficial ownership of the entity. The addition or withdrawal of beneficiaries to a trust indirectly owning a Monaco property is considered as a change of beneficial ownership by the Monegasque tax authorities, thus resulting in a transfer tax liability of 4.5% of the total fair market value of the property.

Monegasque Law 214 allows certain individuals to set up Monegasque trusts which will be enforceable before the Monaco courts. This legislation is independent from The Hague Convention. Under Monegasque Law 214, individuals set up Testamentary Trusts in order to circumvent the Monegasque forced heirship rules and/or to organise their estates with common law executorships arrangements. In this specific context, a Law 214 duty arises at the time of the contribution of assets. The duty varies depending upon the number of beneficiaries listed in the Law 214 trust:

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

No further tax will be due in Monaco at the time of death of the individual regarding the assets held by the Monegasque Testamentary Trust.

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

A distinction must be made between classic trusts set up in a foreign jurisdiction which are recognised in Monaco under The Hague

Trusts Convention (see above), and Monegasque Testamentary trusts set up under Law 214 (see above).

Trusts other than Law 214 trusts may, to some extent, be impacted by Monegasque succession and forced heirship rules, if the deceased is the Settlor of such trusts. In accordance with standard civil law principles, when an estate is assessed at the time of death, it includes not only the assets that were under the control of the deceased at the time of their death, but also any assets that they owned and sold at an undervalue or gave away (e.g. gave away to a trust). Typically, the value of these assets will be added back and included in the deceased's estate's total value. In certain circumstances, these rights might translate into an order to claw back assets transferred previously to an offshore trust.

Conversely, Law 214 is designed to allow the citizens of Common Law jurisdictions to choose their national succession law by filing a Will Trust, thereby avoiding the effects of forced heirship claims from reserved heirs.

This requires: the execution of a trust deed (a Will) before a Monegasque Notary; obtaining a certificate from a duly qualified Attorney appointed 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 are generally recognised in the Principality. The Monegasque domestic law also allows the setup of Monegasque Foundations; however, such foundations can only be of Public or Charity interest, to the exclusion of Private Foundations. The setup of Monegasque Foundations requires the Government's prior authorisation and the payment of a duty assessed on the amount of the capital of the Foundation.

8.5 How are foundations taxed in your jurisdiction?

In the absence of any Monegasque tax applicable to foreign foundations, and of any direct tax in Monaco generally, 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?

Any gift made by the deceased during their lifetime may potentially be clawed back (see question 6.3).

The gift of a Monaco-located asset to a Foundation will be subject to a gift tax at the rate applicable to gifts made to unrelated third parties (16%).

9 Matrimonial Issues

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

Currently, same sex civil partnerships are not recognised in Monaco. However, the Monegasque National Council may study a draft proposal of law aimed at creating a civil partnership. This proposal is currently on hold. According to the wording of the proposal,

civil partnerships would be recognised as a type of contract that individuals are free to conclude. However, the interpretation in relation to the partners' civil rights remains unclear, especially regarding the consideration of civil partners as potential reciprocal heirs on the same basis as a surviving spouse.

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

Two matrimonial property regimes are recognised in Monaco.

In the absence of formal choice made by the spouses, the default matrimonial property regime is the separation of assets.

Instead, the spouses can choose the full community of property regime, *via* a pre-nuptial agreement.

Monaco also recognises foreign regimes, provided that they comply with the law where the wedding was held.

Where one of the spouses is a foreign citizen, Monaco offers the possibility for the spouses to apply the law of the country of citizenship to their matrimonial regime.

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

Pre and post-marital agreements are permitted and recognised in Monaco, provided that they comply with the law of the jurisdiction in which they were executed. Such agreements, if executed in Monaco, must be drafted by a Monegasque Notary.

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 particular, where one of the spouses does not have any personal 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 determines its legal framework completely independently regarding the entry and residence of foreign individuals in the country.

However, the Principality does not issue visas *per se*. As a consequence, and under the terms of a Treaty with France, the first step for certain Applicants (i.e. nationals of a non-EU Member State or Iceland, Liechtenstein, Norway or Switzerland) is to apply for and obtain a specific "long stay visa for Monaco" from the French Authorities. This visa application must be made at the French Consulate of the Applicant's country of origin.

The next step is the actual residence permit application with the Monegasque Authorities, which consists of an interview with the Police and preparation of an application file, including required documentation translated in French.

In all cases, ultimately the decision to grant Monegasque residency to an individual is the Monegasque Government's, and this decision is discretionary (Monaco is not a Member of the EU, hence no rights of establishment exist for any foreign persons).

Applicants must prove that they have sufficient income or capital to live in the Principality of Monaco (generally by way of a bank letter) and must provide the Monegasque authorities with proof of:

- appropriate accommodation in Monaco (which they either are renting or have acquired); and
- a clean certificate of criminal records issued by the countries in which they have resided over the past five years.

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?

Monegasque nationality can only be obtained in very restricted circumstances (notably when marrying another Monegasque citizen). It is the exclusive privilege of the reigning Prince to grant Monegasque citizenship to the applicant. In all cases, to become a Monegasque citizen, an individual must renounce all their other nationalities.

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

No. Monegasque nationals are not taxed differently from non-Monegasque nationals residing in Monaco, with one exception:

French citizens who renounce their French nationality and take up Monegasque nationality will cease to be liable to French income/capital gains/wealth and other French taxes which are attached to them by reason of their French nationality even when they reside in Monaco.

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

There are currently 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 exchanges of information agreements, 16 of which have already entered into force (including countries such as the 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 & 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 involved in the setting-up of group 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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- Relocation to Monaco.
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