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Monaco

PRIVATE CLIENT

Contributing firm

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Monaco.

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MONACO PRIVATE CLIENT



1. Which factors bring an individual within the scope of tax on income and capital gains?

There is not any income tax or capital gains tax in Monaco.

One exception to this rule applies to French nationals residing in the Principality who are subject to French income tax under the 1963 Bilateral Convention between France and Monaco.

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

N/A. See Question 1.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Savings income in the form of interest payments made in Monaco to beneficial owners residing in a Member State of the European Union are subject to a withholding tax at a rate of 35% levied by paying agents established on the territory of the Principality of Monaco.

This withholding tax can be avoided when the beneficial owner authorizes his paying agent established in Monaco to disclose interest payments to the competent authority of the Principality of Monaco which in turn forwards the information to the competent authority of the Member State of the European Union where the beneficial owner is a resident.

4. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is no wealth tax in Monaco.

5. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Both gift tax and inheritance tax are only applicable to assets located in Monaco. Other factors, such as nationality, or the place of domicile / residence, are irrelevant.

Gift tax is applicable to gifts evidenced in writing and/or a notarized deed that must be recorded.

The donee pays the gift tax (unless agreed otherwise) whereas the heir pays the inheritance tax.

The rates of taxation are the same for the two taxes and depend on the degree of relationship between the testator (or donor) and the heir (or donee):

- direct line between parents and children or between spouses: 0%
- between persons bound by a civil partnership contract: 4%;
- between brothers and sisters: 8%
- between uncles, aunts, nephews and nieces: 10%
- between relatives other than the above: 13%
- between unrelated persons: 16%

6. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to

a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

There is no tax on gifts between parents and children or between spouses.

Gifts between individuals bound by a civil contract are subject to a reduced taxation rate of 4%.

7. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

The municipality of Monaco, public hospitals and charitable institutions do not pay taxes on gifts they receive.

8. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

There is no property tax in Monaco.

Legal entities that hold real property rights to one or more real properties located within Monaco, irrespective of the headquarters' location or of the law by which they are governed, must make an annual declaration regarding the change of or the absence of change of the beneficial owner or of one of the beneficial owners of these rights. Some entities are exempt from making this declaration. A local representative duly accredited by the Monegasque tax authorities must be appointed to accomplish such filing.

In the event of a change, a transfer tax equal to 4.5% or 7.5% of the entire value of the real property located in Monaco is owed. This is not applicable if the change is the result of a gift between spouses or to a direct lineal relative.

Sale of real estate located in Monaco also triggers the transfer tax of 4.5% or 7.5% depending on whether the beneficiary meets the criteria of transparency laid down by law.

9. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

Leases are subject to a registration duty, the leasehold duty, which is paid by the tenant. The leasehold duty is calculated at a rate of 1% of the rent and costs corresponding to the entire period for which the tenant occupies the property. The leasehold duty must be paid when registering the lease. Registration must occur under financial penalty within three months of the contract's signature.

10. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

There is none.

11. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Only Monegasque nationals have the automatic right to permanently reside in Monaco.

Foreign nationals aged over 16 who wish to remain in Monaco for a period exceeding three months, or to establish residence in Monaco, must be in possession of a residence permit issued by the Monegasque authorities.

The residence application process depends on whether the applicant is a national of a country Party to the European Union (EU) / European Economic Area (EEA) or not. Individuals coming from outside the EU or the EEA need to obtain a visa from the French authorities first.

Anyone applying for residence in Monaco must evidence accommodation in Monaco, sufficient financial resources, and good moral character (e.g. clean criminal record).

12. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

Monegasque law has rules for both testate and intestate successions. Heirs can freely refuse to be part of the succession.

Monegasque law does provide for forced heirship rules to the benefit of children or, in the absence of children, to the benefit of ascendants in each paternal and maternal lines. The surviving spouse is not entitled to a reserved portion of the estate nor is the surviving civil partner. Accordingly, individuals are not entirely free to dispose of their estate.

The available portion of the estate depends on the number of children:

- 1 child: 1/2 of the estate
- 2 children: 1/3 of the estate
- 3 children or more: 1/4 of the estate

In the event that the deceased leaves no child and only ascendants remains, the available portion of the estate depends on whether ascendants on both parental lines are alive or not:

- Both paternal and maternal ascendants are left alive: 1/2 of the estate
- Only maternal or paternal ascendants are left alive: 3/4 of the estate

In the event that Monegasque forced heirship rules would not be complied with, the heirs who benefit from these rules, and only them, can file a lawsuit in order to recover the part infringing upon their reserved portion of the estate.

13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

In Monaco, the legal matrimonial property regime is the separation of property. Married couples can also select, by contract passed before a notary, to be subject to the community of property regime, or any other *sui generis* regime which is not contrary to public policy.

The matrimonial property regime needs to be liquidated before the succession so that it will impact both the extent of the estate as well as the heirs' rights.

Since the surviving spouse is not entitled to forced heirship rights, he or she only receives from the available portion of the estate after the matrimonial regime has been liquidated.

Each civil partner's assets are owned individually. However, if neither partner can prove that an asset belongs individually to one of them, this asset is considered to be jointly owned by the partners.

14. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

The relevant factors under Monegasque law are the deceased's last domicile and the deceased's nationality.

According to the new Code of Private International law (Law n°1448 of 28 June 2017) which entered into force on 8 July 2017, Monegasque law applies to the succession when the deceased's last domicile is located within the Principality. Concurrently, the law of the country of which the deceased is a national can govern the succession provided that such law was chosen by the deceased during his lifetime in a will.

A person's domicile can broadly be defined as the place where he/she has settled and has his/her center of his/her main interests. The domicile is defined according to both objective and subjective criteria. Monegasque nationals and residents are presumed to be domiciled in Monaco.

15. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

Monegasque conflict of laws rules detailed in Question 14 may lead to the application of Monegasque law or of a foreign law.

The law applicable to the succession is the substantive law of the designated country. Hence, there is no '*renvoi*' and Monegasque courts will not apply the conflict of laws rules of the said country.

Besides, the applicable law cannot prevent the application of forced heirship rules when the law of the country of which the deceased is a national at the time of death provides for such kind of rules. Nor can it lead to the application of forced heirship rules when the law of the country of which the deceased is a national at the time of death does not provide for them.

16. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

Dying without a will leads to the application of the rules of intestate succession which determine the persons

entitled to inherit from the decedent, their order, and their respective shares. Accordingly, a person wishing to avoid the statutory rules of intestate succession should make a will.

Moreover, a will allows to choose the applicable law in case of an international succession, that is when several jurisdictions are involved because of the contacts of the decedent with them or because of property located within their boundaries.

A will is a great estate-planning tool that can help avoid litigation regarding the determination of the applicable law, the designation of the heirs, and their respective shares which would otherwise delay the succession.

Monegasque law recognizes three forms of wills: holographic wills, wills by notary deed, mystic wills.

Holographic wills need to be fully handwritten, dated and signed by the testator.

Wills by notary deed need to be received by two notaries in the presence of two witnesses or by one notary in the presence of four witnesses. The will is drafted by a notary and is read to the testator who signs the will except if he cannot or does not know how to do it. This will by notary deed is also signed by at least two notaries and one witness, or one notary and two witnesses. Beneficiaries of the will or their parents up until the third degree cannot act as witnesses for this type of will, nor can the notary's employees.

Mystic wills can be written by the testator or someone else on his/her behalf and need to be signed by the testator on each page or at the end of the documents depending on who drafted it. Mystic wills are required to be sealed and received by a notary in the presence of four witnesses.

Besides, it is possible to create a testamentary trust in a will in accordance with Law n°214 of 27 February 1936 on trusts – see Question 18 below.

17. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

The heirs administer the decedent's estate; they are also its joint owners. It is also possible to designate one or more executors in a will.

The heirs or the executor are responsible for collecting the assets and distributing them to the beneficiaries with the assistance of a notary.

Only the heirs are liable for the debts and expenses of the estate. They contribute proportionally to what they receive from it.

In the event that there is no heir, or when there is no known heir, or when the known heirs have refused to be part of the succession, a judicial administrator may be appointed by the court to administer the estate.

18. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

Trusts, private foundations, civil companies, and family offices are common practice in Monaco.

Trusts can be created in accordance with Law n°214 of 27 February 1936 which allows nationals from jurisdictions where trusts exist to set up *inter-vivos* and testamentary trusts governed by their own national law.

Foundations are used for philanthropic purposes, see Question 27 below.

Civil companies can be used to manage and invest personal assets. They offer the advantage to conceal the identity of their shareholders and beneficiaries which is only known by authorities listed by law.

Single family offices are not specifically regulated. Their regime will depend on the form they choose to take.

Multi-family offices are subject to Law n°1439 of 2 December 2016 and are growing in number.

19. How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?

Trusts made in accordance with Law n°214 can only be created by nationals from countries where trusts legislation exists. Under this Law, testamentary trusts must respect the formalities set out for wills by notary deed or mystic wills (see Question 16 above) whereas *inter-vivos* trusts must respect the formalities of lifetime gifts. Also, a certificate of compliance with the substantive foreign law under which the trust was

created must be provided by a practitioner approved by the Court of appeal of Monaco.

Only corporations listed by the Court of appeal of Monaco can act as trustees for a Monaco trust. Individuals can act as co-trustee or as local representative but also need to be on this list. Trustees not established in the Principality must designate a local representative. Exceptionally, the co-trustee can be freely chosen provided that he or she only acts for a single trust.

The trustee has to be in possession of and must communicate information related to the identity of: the settlors, the trustee(s), the protector, the beneficiaries or the categories of beneficiaries, any individual with effective control over the trust. This information is only available to specific authorities listed by law (tax, judiciary and financial).

For foundations see Question 27 below.

Single family offices must be incorporated as a "Société Anonyme Monégasque" (SAM) under Monegasque government policy. It is also possible to manage and invest personal assets through a "Société à Responsabilité Limitée" (SARL) or a "Société Civile Particulière" (SCP) but these types of companies do not allow to offer all the services usually provided by family offices.

Multi-family offices must take the form of a SAM. They are subject to prior authorization by ministerial order and approval by the Financial Activities Supervisory Commission (CCAF). This kind of company is subject to a duty of confidentiality, the violation of which is punished by criminal sanctions.

A SAM requires a minimum share capital of EUR 150,000.00 euros and only general corporate information is publicly available, the identity of the families is kept confidential.

It is generally considered that only families owning assets of at least EUR 100 million have an interest in creating a single family office. Whereas a multi-family office generally attracts families owning more than EUR 20 million each.

The beneficial owners of companies must be registered. This information is accessible to authorities listed by law (tax, judiciary and financial). Attorneys, notaries, and bailiffs can also access it in the context of their reporting obligations regarding money laundering, financing of terrorism, and corruption.

20. What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?

No information is available to the public with respect to trusts made in accordance with Law n°214.

For a commercial company such as a SARL, it is possible to obtain an E-BIS extract from the trade registry containing information pertaining to the name of the company, its headquarters, its share capital, the name of the manager(s), and its purpose.

The same E-BIS extract is publicly available for a SAM (managers being replaced by directors). In addition, the initial by-laws as well as subsequent changes related to the information contained in the E-BIS extract are published in the Official Journal of Monaco.

For civil companies, only information related to the name of the company as well as its headquarters is publicly available.

21. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Trusts made in accordance with Law n°214 are subject to a specific tax regime.

All property, wherever it may be, that is put in the trust is subject to the following duty arising on the creation or transfer of the trust in the Principality:

- 1 beneficiary: 1.30%;
- 2 beneficiaries: 1.50%;
- 3 or more beneficiaries: 1.70%.

There is a possibility to opt for an annual tax of 0.20% and Monegasque securities are subject to a reduced duty of: 0.05%; 0.25%; or 0.45%.

Foundations can be exempt from paying gift and estate taxes.

Single or multi-family offices can become subject to tax on profits in the event that they carry out commercial or industrial activities generating more than 25% of their turnover outside Monaco.

The tax on profits is levied on the basis of the following rates:

- 28% for the fiscal year commencing on 1 January 2020;
- 26.5% for the fiscal year commencing on 1 January 2021;
- 25% for fiscal years commencing on or after 1 January 2022.

There is no other specific tax regime.

22. Are foreign trusts, private foundations, etc recognised?

Foreign trusts are recognized and enforced according to the provisions of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

23. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

See above.

24. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

Monegasque law provides that acts made by a debtor which diminish its assets with intent of defrauding creditors are considered void as against those creditors.

Creditors have to prove that the act was made with malicious intent. Moreover, the bad faith of the third party must be established when the act was made against payment.

However, lack of case law applying this rule to trusts raises uncertainty on its application and effects.

In the event that assets are located abroad, the decisions of Monegasque courts would have to be enforced according to the laws of the foreign jurisdiction's courts and will have to respect the public policy applicable to trusts, foundations, or other entities in that jurisdiction.

Also, transferring assets to a third party (a trust, foundation, etc.) in order to prevent creditors to recover their claim could be considered a criminal offense under the new Law n°1.494 of 8 July 2020 on the fraudulent organization of insolvency.

25. What provision can be made to hold and manage assets for minor children and grandchildren?

The parents are in principle the legal administrators of a minor's assets. When parental authority only belongs to one parent, he or she is the legal administrator. This administration can be placed under the control of a judge. A guardian can also be appointed to this end in the most serious situations (e.g. when both parents are deceased or deprived of parental authority).

Lifetime or testamentary gifts to a minor (by will or trust) can provide for administration by a third-party. In the event that the powers of the administrator are not defined, they will be those of a legal administrator under the control of a judge.

26. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Monaco is a Party to the Hague Convention of 13 January 2000 on the International Protection of Adults.

Furthermore, Law n°1474 of 2 July 2019 has amended the legislation regarding the protection of adults with incapacity. There are now 4 regimes of guardianship depending on the circumstances.

Under this new Law, individuals can anticipate their incapacity through a lasting power of attorney ("*mandat de protection future*"), which must be prepared by a notary, designating an agent to act as guardian for them and their children during the principal's incapacity.

27. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

Foundations and associations are the most common charitable / philanthropic structures in Monaco. Both require administrative approval and foundations also require a declaration of intent before a notary.

In order to be approved, a foundation must comply with public policy, morality, as well as national security; meet a need of general interest; and have sufficient funds to fulfil its purpose.

28. What important legislative changes do you anticipate so far as they affect your advice to private clients?

Bill n°244 was adopted on 2 December 2019. The

current legislation will be amended so as to increase to 20 years (as opposed to 10 years currently) the number of years of marriage after which it is possible to acquire the Monegasque nationality. The number of years necessary to apply for naturalization by residency in Monaco may also be increased in the same way.

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