

# The use of French life assurance products in French tax planning situations

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French life assurance products are one of the prime techniques used in tax and estate planning by French residents. They offer advantageous solutions, both from the civil law point of view and in French tax law. In an international context, French life assurance products can be attractive for English persons settling in France but they must usually be set up before a taxpayer becomes resident in France for tax purposes to achieve the most benefit.

By virtue of Article 4.B of the French General Tax Code (*Code Général des Impôts*), a taxpayer will acquire a *domicile fiscal* in France (residence for tax purposes) a) if and when his *foyer* or home is in France, which includes where his main home is or where his family lives, or b) his principal place of residence is in France. He will have his principal place of residence if, for instance, he spends more than 183 days in France per year and he will be considered as French resident under this head even if he spends less than 183 days per annum in France but has a permanent home available in France or is not

resident for tax purposes in another country with a full double tax treaty with France and makes prolonged and regular visits to France even if for less than 183 days, or c) his business activities in France, whether salaried or otherwise, are managed from France unless he can show that this business activity is incidental to his main employment, or d) the centre of his economic interests is France, meaning that he has his main investments in France or they are managed from France or that he derives the majority of his income from French sources. As soon as any one of the above criteria applies to a taxpayer, he will be *domicilié fiscalement* in France.

There are in France a large number and wide variety of life assurance products. In the French context, products called colloquially “life assurance” are nearer in concept and effect to financial savings’ products with tax and civil consequences than to the usual life insurance or assurance products. The capital may usually be withdrawn at any time from the fund, in whole or in part, by the person taking out the life assurance product. In the event of death, the capital is paid to the persons named as beneficiaries. In civil law terms, premiums paid on a life assurance product are not usually subject to the *portio legitima* applied in favour of children or parents in French law (Article L.132-13 of the *Code des Assurances*). However, French courts have shown an increasing tendency to consider insurance contracts as contracts of pure capitalisation and to add back the capital of these contracts into the estate if the *portio legitima* is infringed.

For tax purposes, on death, the tax treatment of life assurance policies has evolved greatly over time. In simple terms, for a life assurance product taken out today, the first distinction to make is whether the person taking out the policy is over or under 70 years of age when the assurance policy is taken out.

a) If more than 70 years of age when the policy is taken out, premiums (but not the capitalised income from such premiums) exceeding €30,500 are taxable as succession duty, the rate of which depending on the relationship between the person taking out the policy and the beneficiary (Article 757 B of the *Code Général des Impôts*). Readers will note that, in French law, children, parents or spouses have relatively low marginal rates if French IHT, but the more distant the blood relationship, the higher the marginal rate of succession duty payable.

b) If the person taking out the life assurance is less than 70 years old, capital paid (premiums and capitalised income) are subject to a prior charge of 20% after a nil rate band of €152,500 per beneficiary (Article 990 I of the *Code Général des Impôts*). This permits the liability to French succession duty to be limited considerably. It should be noted, however, that this prior charge only applies if the person taking out the life assurance policy was tax resident in France (for the purposes of Article 4 B of the French *Code Général des Impôts* – see above) when the policy was taken out. It is irrelevant that the person taking out the life assurance becomes resident in France for tax purposes subsequently. The advantage of taking out the policy before becoming French tax resident is obvious.

This gives a clear and useful tax opportunity for persons who intend to take up residence in France or to emigrate there. Care should be taken over the timing of transactions and all the relevant circumstances must be taken into account. For instance, we would not advise a person with a terminal illness to pay, say, 90% of his assets into a French life assurance policy 15 days before taking up permanent residence in France and then spending the majority of his time there but many other situations can give substantial benefits.

Generally, care should be taken in respect of the state of health of the person taking out the life assurance policy at the time when the policy is taken out and consideration given to the proportion of capital employed as opposed to total assets. This is merely to reduce the risk that the French Fiscal Administration may challenge the transaction on the basis of an abuse of law.

Secondly, French life assurance products can have other tax advantages that are less well-known to the general public.

From the income point of view, withdrawals may be made subject to a tax deduction, the amount of which is dependent on the time the contract is held. The amount of tax payable is certainly fairly high in the early years but the means of calculation of the tax paid is very favourable and it is therefore possible to obtain a regular income often with an average tax charge of less than 10%, even for large amounts. This is to be contrasted with income from

property which may be taxed at marginal rates of up to 58%, if one adds in social security contributions. Furthermore, if withdrawals are not made, there are no tax consequences and therefore these products can be considered as savings products with good tax advantages.

Finally, there are a certain number of advantages in using French life assurance products for the purposes of minimizing French Wealth Tax (*Impôt de solidarité sur la fortune*). For so long as the subscriber of the policy is not resident in France, French life assurance products are exempted from Wealth Tax on the basis that they are a financial investment (Article 885 L of the *Code Général des Impôts*). If the subscriber is tax resident in France, he or she becomes taxable in France for the purposes of Wealth Tax on all assets which would therefore include life assurance products. However, the total of the Wealth Tax and income tax taken together may not exceed 85% of available income [*mécanisme de plafonnement*] (Article 855 V bis of the *Code Général des Impôts*). It is to be noted that this tax advantage is available in an unrestricted manner to taxpayers whose taxable capital assets does not exceed €2,339,000 and in a restricted manner to assets above that figure.

To conclude, French life assurance products offer a number of advantages, both for tax purposes and in civil law to those emigrating to or resident in France. It is a solution often proposed by French tax planning professionals in France but must be used with caution and is complex in law and tax terms.