

French law for Basel practitioners

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

Many residents of Basel own property in Alsace. Some have bought holiday homes in the Vosges or the Sundgau, while others live in Alsace and work in Basel. Swiss families have long invested in apartments in Saint-Louis, Huningue or Mulhouse because prices are much lower than in the canton. Whenever such property is bought, sold, mortgaged or inherited, French law applies. A Basel lawyer advising the client must then work with French notaries, tax advisers and courts.¹

The French notary, the *notaire*, has a central role in these transactions. A sale of real property in France requires an authentic instrument, the *acte authentique*, drawn up by a notary who checks title, collects the transfer taxes and arranges registration. Since the notary is a public officer bound to neutrality, buyers and sellers often use the same notary, although each party may appoint its own, in which case the notaries share the fee.² Clients from Basel who are used to Swiss notarial practice find the French procedure familiar in principle. They are often surprised by the length of the preliminary contract, the *compromis de vente*, by the statutory cooling-off period for buyers and by the transfer taxes, which amount to several per cent of the price for existing buildings.³

Inheritance raises the most difficult questions. French law protects descendants through the *réserve héréditaire*, a compulsory share of the estate that the deceased cannot reduce by will or by lifetime gifts. With one child the reserved portion amounts to half of the estate, with two children to two thirds, and with three or more children to three quarters.⁴ Since the EU Succession Regulation came into force in 2015, a French court determines the law applicable to the succession of a person who was habitually resident in Switzerland according to the Regulation, which applies universally even where it points to the law of a third state. Because a Swiss resident may choose the law of his nationality, a Swiss national living in Basel can subject his estate, including his Alsatian house, to Swiss law.⁵ The French

legislature reacted to the use of foreign laws without compulsory shares by introducing, in 2021, a compensatory levy that allows a child to claim a share from French assets when the applicable foreign law grants no reserved portion.⁶ Swiss law also protects descendants, although the revision of the Swiss law of succession in force since 2023 reduced their compulsory share to one half of the statutory share. The interaction between the two systems requires careful planning.⁷

Tax adds a further layer. France terminated the Franco-Swiss convention on inheritance taxes of 1953 with effect from 1 January 2015, after Switzerland had declined to accept a new convention that would have extended French taxing rights. Since then, French inheritance tax applies to French real property of a deceased Swiss resident. It can also reach worldwide assets when the heir has been resident in France for a certain period.⁸ Many Swiss owners hold French property through a *société civile immobilière* (SCI), a civil-law company used for holding and managing real estate. The SCI facilitates the transfer of shares to children during the owner's lifetime and can simplify the management of property held by several heirs. Because it is generally treated as transparent for income tax purposes, the income is taxed in the hands of its members.⁹ Owners must also consider the annual tax of 3 per cent on the market value of French property held through certain legal entities, which applies unless the entity discloses its owners or falls within an exemption. A further charge is the French real estate wealth tax, the *impôt sur la fortune immobilière*, which applies to non-residents whose French real property exceeds the statutory threshold.¹⁰

1 Notes

1. On real property situated in France, French law applies as *lex rei sitae* to rights in rem and to registration in the land register, and French tax law applies to the property under the Franco-Swiss double taxation convention of 9 September 1966. To be verified. ↩
2. On the role of the French notaire in real property transactions, the requirement of an *acte authentique* for publication and the rules on the sharing of fees, see the Décret no. 55-22 du 4 janvier 1955 portant réforme de la publicité foncière and the regulations of the notarial profession. To be verified. ↩
3. On the *compromis de vente*, the ten-day withdrawal period for non-professional buyers of residential property under Article L271-1 of the Construction and Housing Code, and the registration duties on

property transfers (droits de mutation à titre onéreux), see the relevant provisions of French law. To be verified. ↩

4. French Civil Code, Article 913, on the réserve héréditaire of descendants (one half, two thirds or three quarters of the estate depending on the number of children). To be verified. ↩
5. Regulation (EU) No 650/2012 of 4 July 2012 on matters of succession, Articles 20, 21 and 22, applicable to the succession of persons who died on or after 17 August 2015. Switzerland is not bound by the Regulation, but French courts apply it universally. On the parallel Swiss rules, see Articles 86 et seq. of the Federal Act on Private International Law (PILA; SR 291) as revised with effect from 1 January 2025. Status to be verified. ↩
6. French Civil Code, Article 913(3), inserted by the law no. 2021-1109 of 24 August 2021 confirming respect for the principles of the Republic, on the prélèvement compensatoire. Scope and interaction with the EU Succession Regulation to be verified. ↩
7. On the revision of the Swiss law of succession in force since 1 January 2023, which reduced the compulsory share of descendants and abolished that of the parents, see the amended Articles 470 and 471 of the Swiss Civil Code. To be verified. ↩
8. On the termination by France of the Franco-Swiss convention of 31 December 1953 on inheritance taxes, effective 1 January 2015, and the rules of Article 750 ter of the French General Tax Code, see the official publications of the Swiss Federal Department of Finance and the French tax administration. To be verified. ↩
9. On the société civile immobilière (SCI), its governance under Articles 1832 et seq. and 1845 et seq. of the French Civil Code and its tax treatment, see the standard French literature on real property companies. To be verified. ↩
10. On the annual tax of 3 per cent under Article 990 D of the French General Tax Code and on the impôt sur la fortune immobilière (IFI) under Articles 964 et seq. of that Code, see the official commentary of the French tax administration (BOFiP). To be verified. ↩

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