

The French S.C.I (Société Civile Immobilière)

The advantages and disadvantages

We are often asked by clients if a French company known as an *SCI* (*Société Civile immobilière*) would be an appropriate vehicle for them to use to purchase a property in France. The answer depends on a number of factors including the clients' personal circumstances. Issues of taxation, management and succession will all require consideration in detail before a definite answer can be given.

- What is an SCI?

The type of *SCI* which would be used would be a property holding company having as its object the acquisition, management and construction development of buildings and land.

The *SCI* is a civil company as defined by the French civil code and has a separate legal identity distinct from its members. Such companies are frequently used to own properties in France for the purposes of management and preservation of assets. An *SCI* must have at least two members but is not subject to any minimum capital requirements.

The company is a non-trading entity and does not have limited liability, the members being responsible for all the debts of the company without limit in proportion to their shareholdings.

The company should not carry out any commercial activity. If you are intending to rent out your property on a furnished basis, we would not recommend the company itself carries out the letting and would suggest you discuss the matter further with us prior to proceeding.

The content of the *statuts* (memorandum and articles of association) are negotiable on most points and include restrictions on the transfer of the shares.

Shareholders' taxation situation

- French perspective

SCI companies are generally subject to the rules applicable to civil personal companies rather than commercial capital companies and each individual shareholder will have the right to receive any income distributions in proportion to their shareholdings. Normally each member will be assessed to tax on any profits received from the company at the current French tax rate applicable to persons. Any capital gains tax payable on a sale in France will be assessed as if the shareholder was an individual holding the property directly as the company is fiscally transparent from a French perspective and therefore all the normal allowances will be available. This applies to non-resident shareholders that will be taxed for capital gains tax according to the rules for residents.

- UK perspective

However, from a UK perspective, there have been recent tax law cases in England which indicate that the SCI is considered by the Inland Revenue to be an “opaque” and not a “transparent” company. This means that, as with any commercial company, the occupation of the property for free by the directors and shareholders of the company should be regarded as a benefit in kind and assessable to income tax in the U.K.

The new budget 2008 should improve the situation from an income tax perspective, however the tax treatment of the capital gain on sale of the property is still in question and the “opacity” principle puts the transaction at a risk of double taxation between France and the UK. Please contact us for further details of the current situation.

The shares which are owned by the shareholders in the SCI will, as regards succession law, follow the law of domicile of the particular shareholder at the date of his or her death. This means that for an English domiciled person, provided that he or she does not become French domiciled in the future, then the shares can be freely given by gift or will to any individual without restriction as may otherwise be imposed by French law. However, if at any time in the future a person subsequently becomes domiciled in France (equivalent to tax residency), then the shares will follow the new domicile and restrictions on the transfer of shares will apply on death and French succession law will be applicable.

In either case, whether a person is domiciled in France or not, transfers of shares on death will be subject to French succession tax.

Management

Management is carried out by a manager or “*gérant*” rather than a board of directors. The *gérants* powers are determined by the *statuts* of the company and are subject to few legal limitations. The normal scenario would be to appoint one or more person as a “*gérant*” who has capacity to bind the company and will be the legal representative of the company for all purposes. This person is voted by the shareholders and his or her appointment can be revoked at any time by the appropriate number of votes as specified in the *statuts* (memorandum and articles of association).

The SCI will have to be specially tailored to meet you and your other co-owners’ requirements and cannot be purchased “off the shelf”. It takes approximately three weeks to set up the company once the *statuts* have been agreed and signed.

Reporting Requirements

You should note that a minimum amount of declarations/reporting requirements may be required each year. Accounts should be kept which are approved by the members in general meeting. However there is no need to lodge the SCI’s account with the local Court of commerce, a rule that only applies to commercial companies. Note that in order to avoid a 3% tax on the value of the rental value of its property an SCI should lodge an annual return disclosing the identity of its shareholders. This might be replaced by an undertaking to disclose the information at the authorities’ request when forming the company. We can advise further on this depending on your individual position as well as on any anti-avoidance French tax legislation that may be relevant.

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