

Noé Barkate

Avocat Fiscaliste

Anticipation - Practical information

- ❖ What are the main mechanisms for passing on my assets to my children?

Some possible strategies:	A few special features	When should I consult a lawyer?
Life insurance	Automatic settlement outside the estate and the transfer may be tax-advantaged.	Each transmission strategy requires analysis of: - Implications for private international law (law applicable to the form, substance and effects of the deed); - Civil implications (transfer in split of ownership, relationship to the estate, hereditary reserve, reduction, inheritance fraud, compensatory levy, etc.); - Tax implications (estimated donation related tax, inheritance tax, emoluments, elimination of double taxation, etc.).
Inter vivos donation	Estate planning tool of choice; Notarial deed required.	
Donation-partage	Notarial deed required; enables the values transferred to be set in stone.	
Manual gift	No formalities are required - additional stipulations may be included in an affidavit of donative intent.	
Legacy	Made in a will; May contain a choice of civil law applicable to the estate.	
These strategies must be adapted according to: <ul style="list-style-type: none">- Your plans and specific requirements (e.g. retaining control);- Type of assets (nature, value, location, type of ownership, etc.);- Family composition (minors, protected adults, blended families, children from a first marriage, marital status, etc.);- The place of residence and nationality of family members.		

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❖ What are the main mechanisms to ensure the protection of my surviving spouse?

Some possible strategies:	A few special features	When should I consult a lawyer?
Life insurance	Allocation of rights outside the estate (cash and/or financial assets).	Each transmission strategy requires analysis of: - Implications for private international law (law applicable to the form, substance and effects of the deed); - Civil implications (transfer in dismemberment of ownership, relationship to the estate, hereditary reserve, reduction, inheritance fraud, compensatory levy, etc.); - Tax implications (estimated donation related tax, inheritance tax, emoluments, elimination of double taxation, etc.).
Last living donation	Increases the surviving spouse's share of the estate.	
Changes to the matrimonial property regime	Confers rights/Increases the surviving spouse's share on the couple's joint property, or even their own property.	
Non-trading company	May confer on the surviving spouse rights of use/enjoyment/management over the assets held by the company.	

❖ I want to pass on a property to my children. What strategies are available?

Donation in split of ownership	Donation of sums of money to acquire all or part of the property	Transfer of assets through a non-trading real estate company (SCI)	Leveraged buy outs (LBOs, OBOs)
In particular, it will make it possible to reduce the basis of assessment for donation related tax depending on the age of the beneficiary	This will make it possible to combine several tax allowances	This will make it possible to avoid joint ownership and facilitate the management of the property while optimising the tax treatment of the transfer of the shares	Transfer of the property to a specially created entity financing the acquisition through debt
These strategies can be combined.			

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❖ I want to pass on my business. What strategies are available?

	contribution and share transfer	Donation before sale	"Dutrel Pact"	Leverage Buy out
Potential benefits	Benefit of a deferral or suspension of taxation on capital gains	Allows unrealised capital gains to be purged	Allowance of 75% on the value taxable for free transfer duties	Legal, tax and financial leverage
When should I consult a lawyer?	The lawyer's role is to propose and implement a strategy based on: <ul style="list-style-type: none"> - The family and personal situation of the company director; - The company director's tax situation; - Its asset and management projects. 			

❖ How much can I give to my children/grandchildren without paying taxes?

	Donations to children	Donation to grandchildren
Exemption renewable every 15 years (= tax reminder):	€100,000 per parent and per child + €31,865 (sums of money) per parent and per child (subject to conditions)	€31,865 per grandparent and grandchild + €31,865 (sums of money) per grandparent and per grandchild (subject to conditions)
Theoretical total exempt amount that can be received per child and/or grandchild from both parents and/or four grandparents every 15 years	€263,730	€254,920

❖ What rights do I have in the estate of my spouse, civil union partner or live-in partner?

	Husband and wife	Civil union partner	Live-in partner
Civil rights in inheritance	¼ in full ownership or 100% Usufruct (life interest) (if joint children)	No right in the absence of a <u>will</u> . If there are children and a will: entitlement to the legal available portion.	No right in the absence of a <u>will</u> .
Taxation	No inheritance tax.	No inheritance tax.	60% donation/inheritance tax after an allowance of €1,594.
Possible optimisations, including:	- Change of matrimonial property regime; - Donations between spouses; - Life insurance.	- Life insurance; - Non-trading company.	- Life insurance; - Non-trading company.

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- ❖ What is the amount of the French hereditary reserve and what are the options for overcoming it?

Number of children	Global reserve = Fraction of an estate reserved for certain heirs	Available portion = Fraction of an estate that can be disposed of freely
1	1/2	1/2
2	2/3	1/3
3 or more	3/4	1/4

Ways of avoiding the French hereditary reserve:

- Taking out a life insurance policy (subject to the qualification of “manifestly exaggerated premiums”);
- Change of the civil law applicable to his estate (via a “*Professio juris*” designating the law of another nationality or via a change of residence);
- Strategies based on present use;
- Strategies based on the accretion clause.

- ❖ I would like to plan ahead for the settlement of my estate. What should I do?

	Civil anticipation	Tax planning
Anticipation related to the civil law applicable to the estate	<p>Establishing of the civil law applicable to the <u>estate</u> and <u>matrimonial regime</u> under the rules of private international law.</p> <p>Anticipate the civil law applicable to your estate and matrimonial regime by means of a <u><i>professio juris</i></u> and/or a <u>prenuptial agreement</u></p> <p>Possibility of choosing the competent <u>court</u> to handle your estate and the dissolution of the matrimonial regime.</p>	<p>Establishing the applicable tax law and the right to tax based on local tax law and/or tax treaties.</p>
Anticipation related to the distribution of assets through estate	<p>Determining the portions and assets to be passed on to the heirs/legatees/surviving spouse;</p> <p>Calculation of the disposable portion and the hereditary reserve;</p> <p>Analysis of the impact of an action involving reduction, retrenchment, compensatory levy, etc.</p>	<p>Establishing the tax applicable to the transfer under local law and/or tax treaties;</p> <p>Determination and application of the rules for eliminating double taxation.</p>

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❖ I am capable and wish to anticipate the protection of my person and my assets

Protective power of attorney	Advance health care directives	The trustworthy person
Appointment of one or more representatives to manage, administer or dispose of the assets of a person who has become incapable of doing so alone. And/or assistance with his personal life.	Express the wishes regarding the conditions for continuing, limiting, stopping or refusing medical treatment or procedures.	Designation of a person to accompany and be consulted by medical professionals if the patient is unable to express his wishes.

❖ I want to pass on my assets to a charity. What are the tax implications?

	Association	Endowment funds
Manual donation	Exemption from gift tax if qualified as an organisation of general interest	
Liberality (inter vivos donations or wills)	Exemption from gift tax only if qualified as being of public utility AND general interest	Exemption from gift tax if qualified as being in the general interest
Cash contributions (pure and simple)	They are not taxable unless they are submitted voluntarily for registration, in which case they are subject to a fixed fee of €125.	
Income tax/wealth tax reduction	Yes, if qualified as an organisation of general interest (66% or 75% of the donation up to a certain ceiling, depending on the organisation's activity).	
When should I contact a lawyer?	<ul style="list-style-type: none">- Creation or modification of the organisation;- Confirmation of the tax treatment of a gift;- International context: non-resident donor or non-French charity.	