

French legacies - act quickly to save your charity 60% tax

27 MARCH 2019

CATEGORY:
[ARTICLE](#)



Historically UK charities have faced discrimination preventing them from securing the full value of legacies from French estates. Those difficulties have ostensibly been resolved – but only at the expense of complying with strict and arbitrary time limits. 60% tax may still be levied if charities do not apply for exemption within 12 months of the death or only 6 months if your benefactor died tax resident in France (irrespective of when you are notified).

Historic issues

Receiving a legacy from a French estate could prove a somewhat poisoned chalice because its tax treatment was often uncertain and relied on ad-hoc relief at the discretion of local notaries and tax authorities.

This was due to the French government's historic reluctance to update national legislation to bring it into compliance with EU law. The Stauffer, Persche and Missionswerk line of ECJ cases since 2006 have confirmed that the fundamental EU principles of free movement of capital and non-discrimination between EU member states apply in the context of cross-border legacies. However, UK charities still grappled with a refusal to recognise the direct applicability of EU law and faced tax at a rate of 60%, being the rate applicable to non-charity non-family beneficiaries.

EU compliance

In 2015 France introduced legislation ostensibly aimed at compliance with EU law. In relation to estates where the testator died after 1 January 2015, an EU-based charity may now benefit from the same tax-privileged status as a French charity if it

1. satisfies the requirements applicable to French charities; and
2. receives a ruling from the French tax authorities confirming its eligibility for charitable tax relief.

Taking these in turn, the EU-based charity must have similar characteristics to French eligible charities and the legacies received must be applied toward activities similar to those of a French registered charity. Furthermore, the proposed legacy to the EU-based charity must be allocated to 'eligible activities'.

Strict time limits

Whilst this is good news in that it confirms that UK charities should benefit from French tax exemption (before Brexit is complete), it is crucial to be aware that if you do not act quickly your charity may be subjected to the 60% tax regardless of its eligibility otherwise for tax exemption. This is because the deadline for applying to the French tax authorities for eligibility is the same as that for filing the tax return in France during probate: **12 months after the death if the testator died tax resident outside of France and 6 months after the death if the testator died tax resident in France, without possibility of extension – regardless of when the charity is notified of the legacy.**

What we can do

In order to help guide you through the process and consider whether your charity is likely to be eligible for exemption, Withers works closely with French Counsel on the criteria for eligibility and procedure for (and anticipated cost of) obtaining the requisite ruling from the tax authorities in Paris.

You can obtain a ruling in advance of the testator's death, so you will be able to reassure your supporters in France, or with any French assets, that

any legacy they leave your charity should be tax exempt and that the charity exemption applies for future legacies to your charity from French estates.

Alternatively, if your charity has already received a legacy and wishes to benefit from tax exemption, it will need to apply for an 'after the event' ruling in the same way. Whilst this will undoubtedly add to the costs associated with the legacy, there is at least now a clear process for establishing the exemption.

We can provide you with a report on how the legislation applies to your charity and what you can expect in terms of procedure, timescale and cost.

At least as long as Brexit is delayed...!

Authors

Phineas Hirsch

SENIOR ASSOCIATE | LONDON

Private client and tax

 +44 20 7597 6484

 phineas.hirsch@withersworldwide.com

Lauren Rapeport

ASSOCIATE | LONDON

Private client and tax

 +44 20 7597 6046

 lauren.rapeport@withersworldwide.com