

Together forever



Legal expert **Matthew Cameron** highlights the potential tax pitfalls which lie in wait for unmarried couples living in France and suggests careful planning before moving

People living together as an unmarried couple in Britain have often – in the past – referred to themselves as common law husband and wife. Yet, while the reference may have been commonplace (no pun intended) before now, the legal and financial implications of living as a ‘common law’ married couple were often not appreciated. It is much the same in France: there are certainly tax implications to living together as an unmarried couple, and here the tax consequences can be even more marked, depending on a couple’s circumstances.

In this article, we will have a brief look at some of the differences which arise depending on whether a French resident couple is married or cohabiting. Unless any specific point is made to the contrary, please note that any reference I make to a married couple will be a reference to a heterosexual or homosexual couple, and any reference to marriage will include references to couples having completed a British Civil Partnerships Agreement (‘CPA’) or a French Pacte Civil de Solidarité (‘PACS’). These are all now, finally, to be seen as bringing largely the same results, at least for taxation purposes. There are nevertheless a few differences in their treatment, as shall be seen.

INHERITANCE TAX

The main point that is often misunderstood about British couples living together but not married, relates to inheritance tax. A standard position for a British couple would be for the surviving partner to inherit all of the deceased’s estate. While that may well be possible, there will not be the complete exemption from inheritance tax that would apply were the couple married: anything inherited by the partner would potentially be taxable, in the same way as the remainder of the estate.

There is an exemption to inheritance tax for

anything passing to a surviving spouse in France as well. However, the position for an unmarried couple is much greater than in the UK. Anything that the surviving partner may inherit from the deceased would be subject to inheritance tax at 60%. And while there is an initial tax-free allowance, this is less than €2,000, so to all intents and purposes, is negligible. This rate of tax is applied to ‘strangers in blood’; the analogy is perhaps indicative of the way unmarried couples are viewed, by the taxman at least.

Again, it should be stressed that the exemption to inheritance tax would apply equally to a couple having completed a PACS or an English CPA as to a married couple; and a married couple may be of the same sex or different sexes (as confirmed by an amendment from 2013 to article 143 of the French Civil Code). It is the unmarried couple that is subjected to the high level of inheritance tax.

INHERITANCE RIGHTS

However, it is to be noted that inheritance rights on death (that is, what a surviving partner may expect to be entitled to inherit automatically) differ substantially as well; and there is a difference between marriage and other forms. In accordance with French law, a surviving spouse would generally be able to inherit at least a part of a deceased’s French estate; the actual amount depending on a number of issues, such as whether the deceased had children, and whether those children were common to the marriage or from another relationship. On the other hand, such minimum rights of inheritance do not exist in favour of an unrelated couple, nor to a couple having completed a PACS or a CPA.

Of course, the new EU Succession Regulations (as explained in *Living France*, September 2015), as well as various steps that



can be taken for the purposes of estate planning, can affect the inheritance position, but that is outside of the scope of this article. Suffice to say that for any couple contemplating a purchase in France, it is important to give detailed consideration, in advance, of the implications of French inheritance law and tax matters, with attention being made for the cross-border consequences that may arise.

INCOME TAX

We have looked so far at the tax consequences between a couple arising on the death of one of them. There are, however, other important

consequences on an ongoing basis as well. Income tax is applied to married couples on a ‘household’ basis. This is different from the situation in the UK where everyone completes their own income tax return. Where the couple are married or subject to a PACS or CPA, French income tax is calculated by taking an accumulated total of income offset with multiple allowances potentially available. The number of allowances will vary in accordance with the number of children in addition to the number of people in the ‘household’. An unmarried couple would be separate ‘households’ for this. Inevitably, the income tax calculation is substantially complex and there is

not enough space to give that sufficient thought here. However, it is clear that differences can arise, just as they can between unmarried and married couples.

PENSIONS AND INVESTMENTS

Whenever couples are looking at their financial planning, they will inevitably give thought to investments and pensions. It is always prudent to consult specialist financial advisers on such matters. As with inheritance planning and income tax matters, careful thought should be given to the differences that can arise depending on a couple’s personal circumstances. It is reasonable to suggest,

Income tax is applied to married couples on a household basis. This is different from the situation in the UK

though, that the advice sought must come from professionals with suitable knowledge, experience and accreditation to offer investment advice on both sides of the Channel. Just because a pension or an investment plan may have been established through a UK-based company does not necessarily mean that it would only be subject to English law; if you are living in France, there may well be French legal and tax consequences. And since the UK definition of ‘domicile’ differs from the French definition, it is not necessarily going to be possible to claim that one has retained a UK domicile such that English law would apply to their investments.

Overall, it is evident that a number of differences may exist, depending upon whether a couple is married, unmarried, or in a civil partnership. Careful planning and expert advice are therefore extremely prudent, at the earliest possible opportunity. There may be some more romantic reasons to marry than tax reduction alone, but the potential expense avoided could pay for an extremely good wedding reception! **LF**

www.ashtonkcj.co.uk

Matthew Cameron is partner and head of the French Legal Services team at law firm Ashton KCJ

NEXT MONTH...

Advice on tax-efficient savings and investments for those moving to France.