

SCI : A GUIDE FOR ESTATE PLANNING

1. By transferring shares of an SCI (“Société Civile Immobilière”), the owners of a real estate property located in France enjoy several tax benefits.

The SCI allows to transmit the property at a lower value and therefore enables its partners to pay less taxes than if the building had been transmitted directly.

Indeed, when they are given, donated or transferred by inheritance, the shares of an SCI generally support less expensive taxes than the taxes applied to properties transmitted directly from individuals to individuals. This, because the value of the shares is reduced by the amount of the accounting liabilities of the company. And the amount of the loan contracted for the acquisition of the property is included in accounting liabilities of the SCI.

Thus, for a property worth € 500,000 funded by a bank loan for which an amount € 200,000 is still due, the inheritance taxes and levies are calculated on the basis of € 500,000 for a directly owned property, while the taxes and levies applied to the transfer of SCI shares will be calculated on a base € 300,000.

2 . Certainly, the loan can also be taken into account for directly owned properties, but only under the condition that the beneficiaries of the transfer effectively become the new borrowers. Nevertheless, french law allows this under several restrictive conditions :

- The loan must have been contracted in the interest of the property transferred (this will most often be the case)
- The loan must have been contracted with a bank (this proves to be more problematic and offers less option sthan with an SCI, where lenders can be individuals, or an other SCI, or a trust ...)



- The transfer of the loan must be included in the deed of transfer and must be notified to the bank (more possibilities are often opened to the SCI's partners, as the the SCI is the borrower, not the partners ...)

And, last but not least, the practice shows that the transferees, or one of them, proves to be insolvent. Therefore, it is basically impossible to proceed to the transfer the loan when the property is held directly .

3. Moreover, the SCI benefits from large advantages in matter of inheritance taxes and levies, as well as when it comes to the french wealth tax ("Impôt de Solidarité sur la Fortune").

This, because the french tax administration admits that the SCI shares can be automatically undervalued by 10 to 15 % at the moment where the estate's aassets will be estimated. This "discount" is a tolerance rule which corrects the difficulty for shareholders to transfer their shares of an SCI, mostly because such transfer requires the approval of the other shareholders.

4. For civil reasons as well, and not for tax reasons, the SCI also appears to be very useful to non-resident owners of immovable property situated in France, when thet want to transfer the property, as the SCI allows them to circumvent the effect of the french so-called hereditary reserve rule ("réserve héréditaire").

Under this rule, which is specifically French, a large part of an individual's estate must compulsory be transmitted to the so-called "presumptive" heirs ("héritiers réservataires") : children, grandchildren, parents, or in the absence of descendants and parents , the surviving spouse.

It is therefrom not possible in France to disinherit the descendants. However, everyone can freely dispose of its remaining assets, ie its "disposable portion " ("quotité disponible").



Disposable portion and the hereditary reserve vary depending on the number of children presumptive heirs :

- In the presence of one child only, the transferor can only dispose of the half of his assets, the other half being due to the only child.
- In the presence of two children, the transferor can only dispose of one third of his assets.

For all immovable properties held in France, it is impossible to escape this rule, unless they are held by SCI. In this case, the French law can't be enforced and it is the law of the country in which resides the transferor or deceased which is applicable.

And if this country does not know this kind of rule, as in Great-Britain for instance, the transferor of the property will be completely free to organize and plan the distribution of his assets.

5. Finally, the use of an SCI allows, to some extent, to defeat the unfavorable tax regime applying to estates on dismantled property ("propriété démembrée").

If one parent benefits of the usufruct of a property for which the bare ownership is held by one of his presumptive heirs, the tax administration considers that the property in question falls within the estate of the usufructuary, for a value just as for a full ownership.

The administration considers that, in reality, the deceased has funded during his lifetime the full ownership of the property.

Inheritance taxes and levies are in consequence fully due, while in principle the meeting of the full ownership in the hand of the bare owner for cause of the death of the usufructuary should not constitute a taxable transfer.



Most fortunately, this disadvantageous rule is not enforceable in two cases:

- When the heir has received the bare ownership by mean of a notarial deed more than three months before the death of the transferor.
- When the heir buys the bare property with funds received by donation, the presumption is set aside if the deed details the origin of the funds.

This tax rule, finally, is also excluded when using an SCI.

For instance, when purchasing a property under a schem of dismantled ownership : instead of acquiring the bare ownership of a building whose parents are usufructuary , the children incorporate an SCI to complete the acquisition of the bare property.

In this case, the disadvanteous tax rule can not play because the SCI is not considered an heir of the usufructuary.

