

IAP 2025

Personal holding vehicles: risks and opportunities for HNWIs

Munich, Germany
15-17 May 2025

Agenda

- *The case*
- *The Italian perspective*
- *The French perspective*
- *The Liechtenstein perspective*

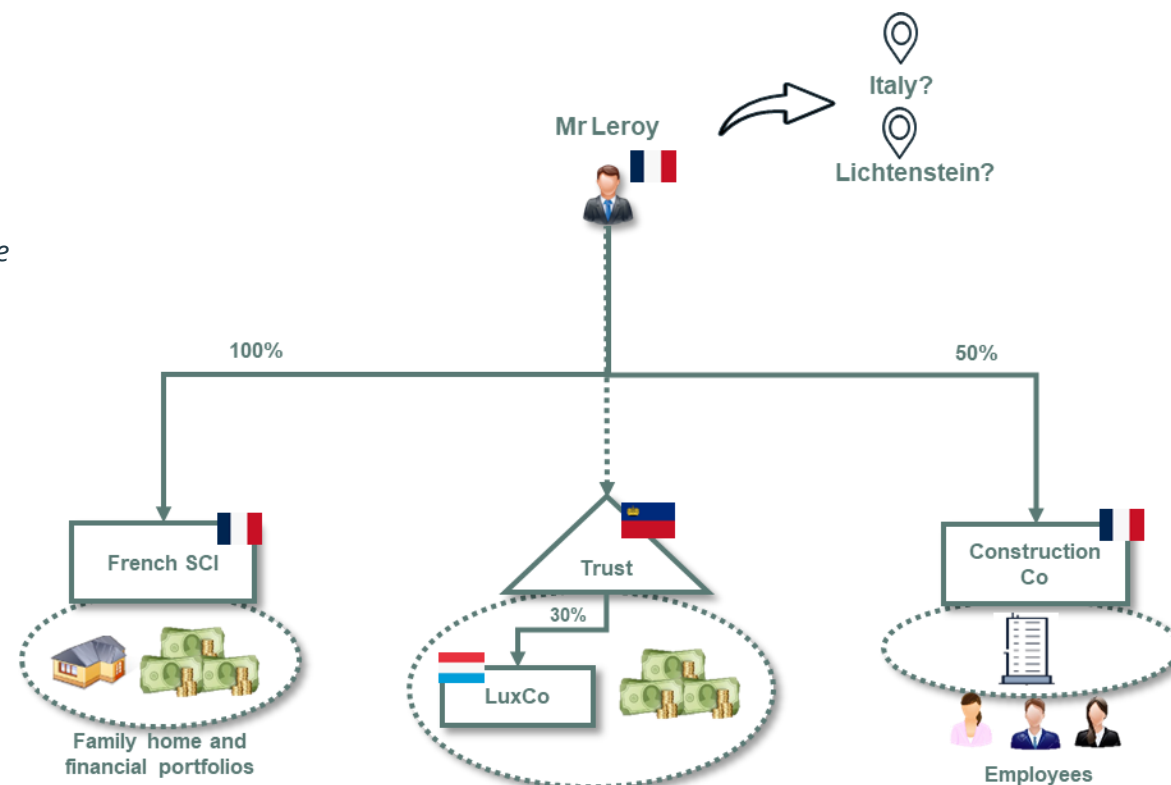


The case



The case

- Mr. Leroy is a French tax resident individual. He has always lived in France with his wife and his children
- Mr. Leroy is the sole shareholder of a French holding company set up as a *société civile immobilière* ("**French SCI**"). The SCI owns the French real estate property where Mr. Leroy currently lives with his family and financial portfolios held and managed in France. The managers (*gérant*) of French SCI are Mr. Leroy and his wife
- Many years ago, Mr. Leroy set up a discretionary trust ("**Trust**") under the law of Liechtenstein for the benefit of himself, his wife and his children. The trust's assets consist of financial portfolios held and managed in Liechtenstein as well as a 30% participation in an operating company resident in Luxembourg ("**LuxCo**").
- Mr. Leroy owns a 50% interest in a French company ("**ConstructionCo**") active in the construction industry with employees and offices in France. Mr. Leroy is also a director of ConstructionCo. The other director is a French resident individual who owns the remaining 50% interest in the company
- Mr. Leroy heard about beneficial tax regimes available to individuals in Italy and Liechtenstein and is thus considering relocating to one of such countries by the end of 2025



The Italian perspective



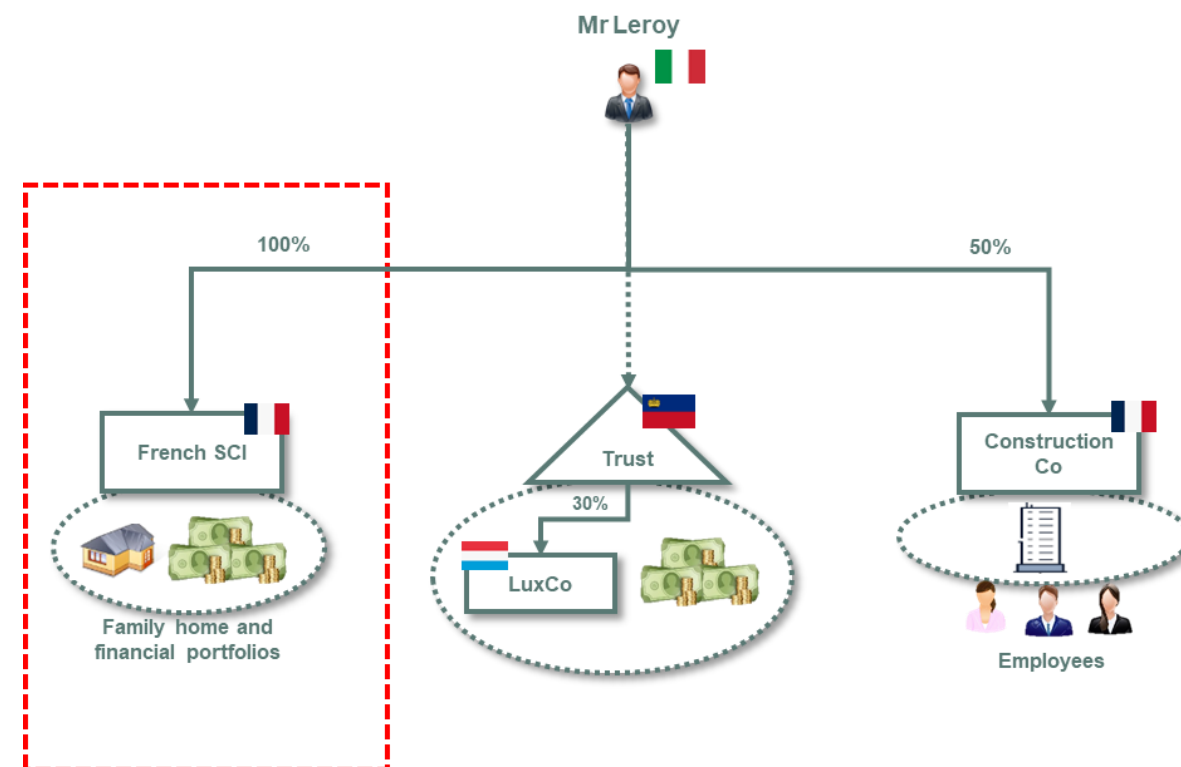
Italian lump sum tax regime (in a nutshell)

- ✓ Condition: non-residence in at least 9 out of the 10 years preceding the first year of application of the regime
- ✓ Duration: up to 15 years duration
- ✓ Annual substitute tax of 200k Euro on foreign source income and gains
- ✓ Exclusion of gain from transfer of substantial (20%/2% threshold) participation in first 5 years, but possibility of advance disapplication ruling (5-year residence commitment)
- ✓ Exemption from wealth taxes, and reporting obligations, on assets held outside Italy
- ✓ Exemption from inheritance and gift tax on foreign-situs assets
- ✓ Possible extension of the regime to qualifying family members (annual substitute tax of 25k Euro for each family member using the regime)
- ✓ Optional tax ruling with specific Office of the Revenue (on eligibility to regime; treatment of trusts and holding companies; disapplication of exclusion for gains on substantial participations in first 5 years; treatment of carried interest; etc)
- ✓ Possibility to exclude one or more foreign jurisdictions from the scope of the lump sum tax regime
- ✓ Tax regime works well even in case of off-shore trusts, foundations and holding companies (as shown in this case study)

French SCI

Key points

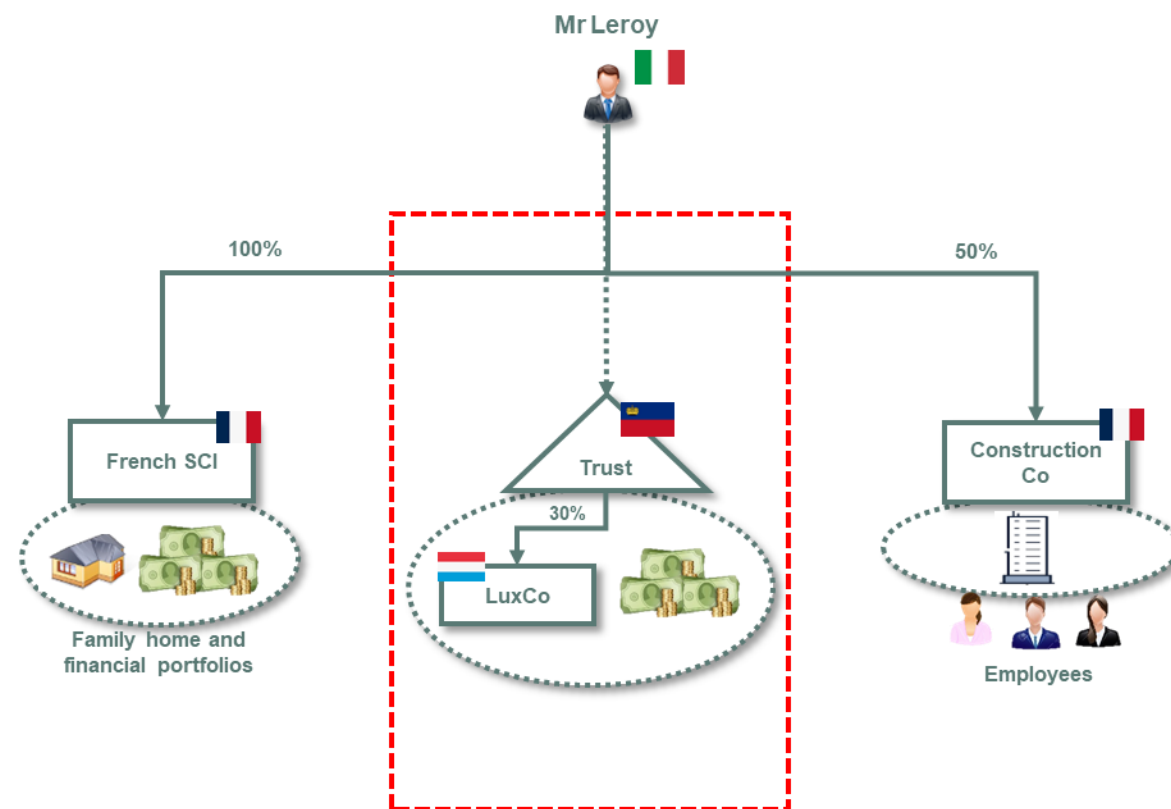
- Look through treatment of French SCI (possibility to obtain confirmation through ruling)
- Facts pointing to the disregarded treatment of an entity:
 - Sole shareholder or closed family members as sole shareholders;
 - Directors coincide with shareholders (or corporate services providers with limited compensation);
 - No offices nor employees;
 - Corporate assets privately used by the shareholder (eg, properties used as residential/holiday home for the shareholders)
- Benefits of the look through treatment:
 - No corporate tax residence issue;
 - Income and gains of French SCI are directly imputed to Mr Leroy and covered under the regime (to the extent that they would have been covered if derived directly);
 - The sale of French SCI is viewed as a sale of the underlying assets and therefore not a sale of a substantial participation;
 - Flexibility in keeping French SCI in place or dismantling it (opportunity to dismantle French SCI to be checked also considering French tax ramifications).



Trust structure

Key points

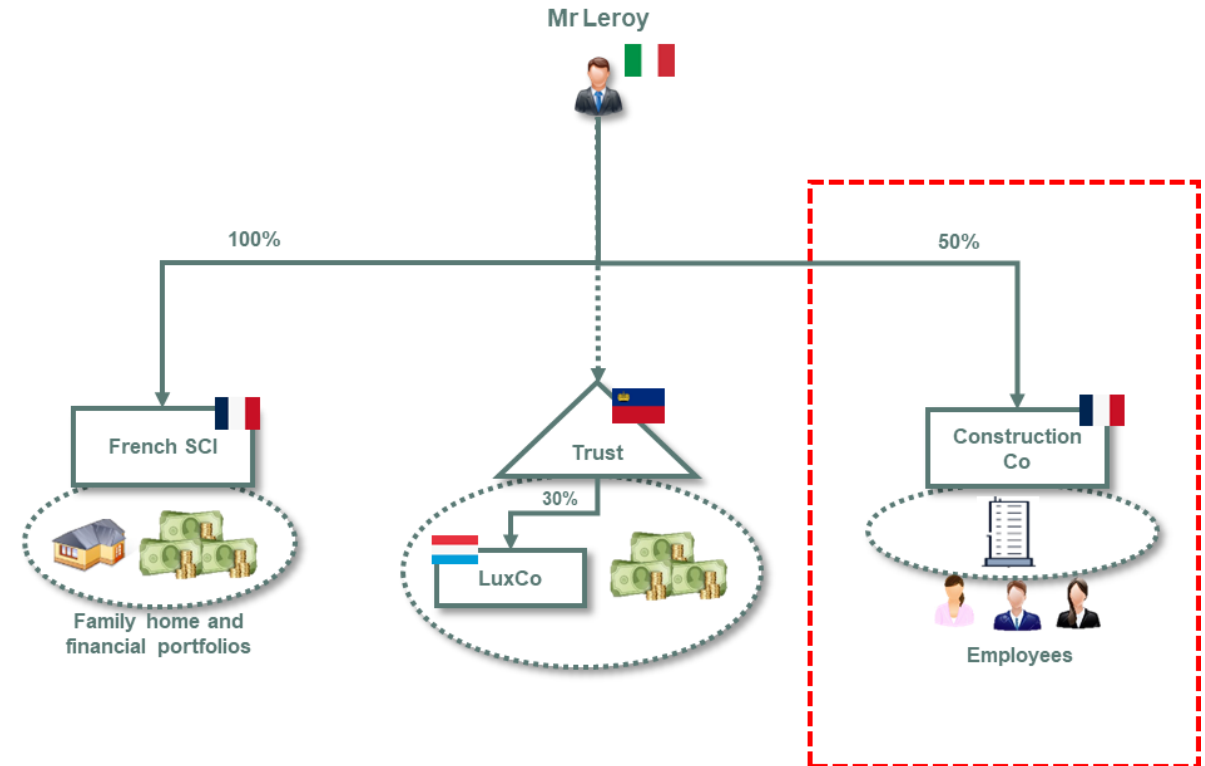
- Opaque treatment of the Trust (possibility to obtain confirmation through ruling)
- Facts pointing to the opaque treatment of a trust:
 - Discretionary powers of the trustee to manage the trust's assets;
 - Trustee is a third party professional unrelated to the settlor/beneficiaries;
 - No intrusive powers of the settlor/beneficiaries (e.g. veto powers; power to remove the trustee; etc.);
 - Protector not under the direct or indirect influence of the settlor/beneficiaries (eg, power to remove the protector not with the settlor/beneficiaries);
 - No family relationships between settlor/beneficiaries, on the one hand, and the trustee or protector, on the other
- Benefits of the opaque treatment of the Trust:
 - Income and gains of the Trust imputed to the Trust (and not to Mr Leroy or his wife/children) and not subject to Italian tax if foreign source income and foreign source gains;
 - No application of carve out rule on gains from substantial participation on the sale of LuxCo.



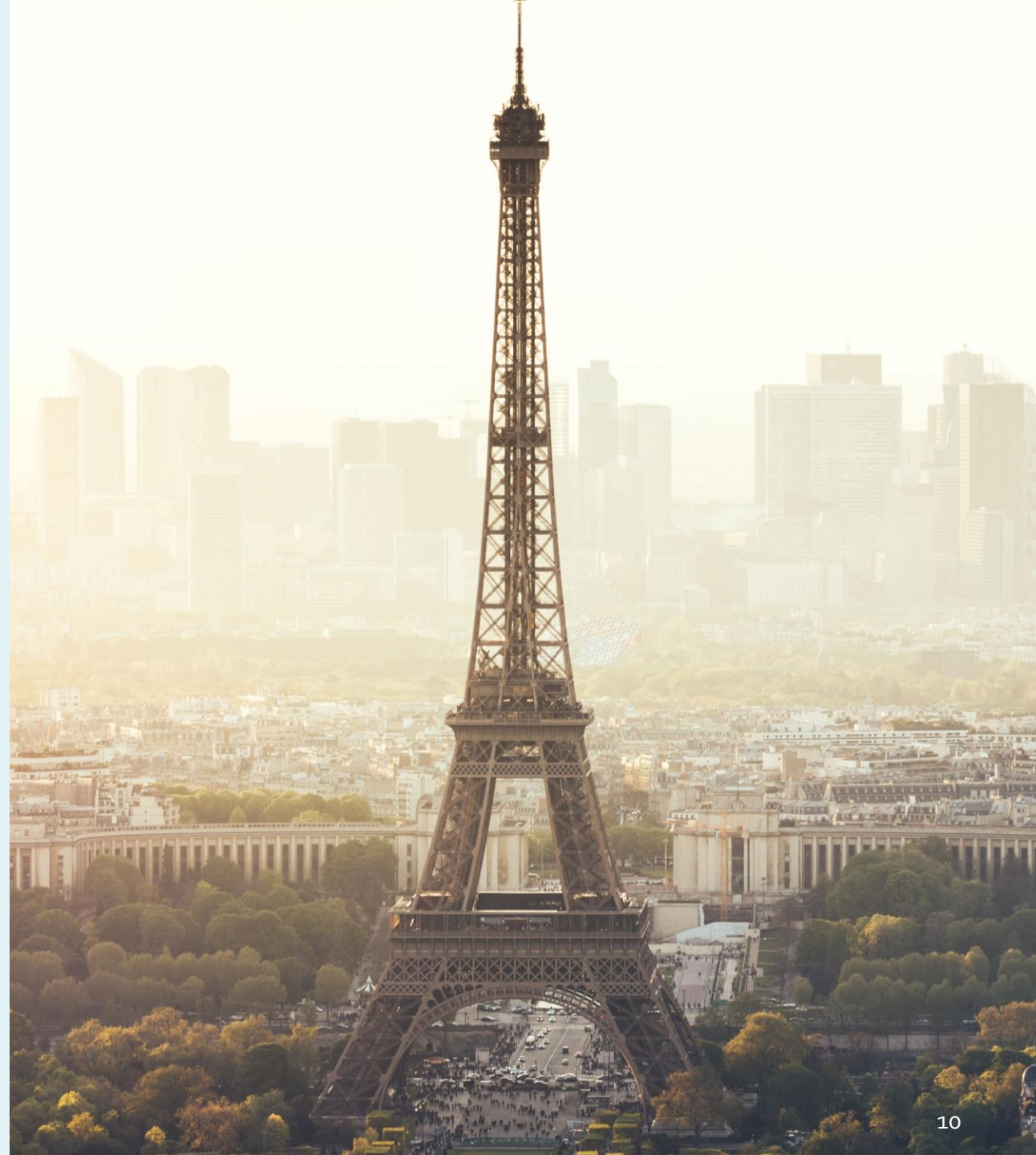
ConstructionCo

Key points

- Advance disapplication ruling on gains for substantial participations in the first 5 years of application of the lump sum tax regime
- Italian tax residence exposure of ConstructionCo following Mr Leroy relocation to Italy to be properly mitigated. Eg:
 - Majority of directors not resident in Italy;
 - Board of directors' meetings outside Italy;
 - No interaction of Mr Leroy with other directors while in Italy;
 - Most of assets and activity outside Italy.



The French perspective



Steps to secure tax residency change

► The departure from France must be formalised to avoid any challenge from the French tax authorities as to your tax residence status. This includes:

- Termination of ongoing domestic contracts (insurance, utilities, telephone, etc.).
- Disposal of the main residence in France.
- Sale or exportation and re-registration of vehicles abroad.
- Transfer of financial assets to a foreign bank account. A French account may be retained solely for ancillary purposes (e.g. payment of French taxes or loans).
- Resignation from any French corporate mandates (e.g. *gérant*, *président*, *board member*), particularly where the entity has French substance or generates income locally.

► In parallel, it is essential to establish an effective tax residence abroad (e.g. in Italy or Liechtenstein). This implies that the individual's centre of personal and family, professional or economic interests is effectively located outside France.

► Simply spending more than 183 days abroad is not sufficient.

The relocation must be supported by concrete and objective elements showing that **day-to-day life, professional activity, and decision-making** are effectively exercised in the new jurisdiction.

Exit Tax Implications

► **Exit tax applies** when a taxpayer moves their tax residence outside France and meets **both** of the following conditions:

- Has been a French tax resident for at least **6 of the 10 years** preceding the move;
- Holds, at the time of departure:
 - ✓ **Shares, securities or similar rights** with a total value exceeding **€800,000**; or
 - ✓ Rights representing **at least 50% of a company's profit entitlement**.

► **Exit tax targets:**

- **Unrealised capital gains** on qualifying holdings, calculated as the difference between the market value at the time of departure and the acquisition cost;
- **Earn-out rights** from previous sales (*clause de complément de prix*);
- **Deferred capital gains** under French tax roll-over regimes.

► **Payment deferral (*sursis de paiement*) :**

- **Automatic** deferral applies if the new country of residence is in the **EU** or has a **tax treaty with France providing for recovery of tax debts**.
- ⚠ **Liechtenstein is excluded** from this regime. Taxpayers relocating there must request a deferral and provide **financial guarantees**.

► **Tax relief after transfer :**

- The tax may be cancelled (**dégrèvement**) if the assets are not sold, transferred, or redeemed:
 - ✓ **After 2 years**, for holdings below €2.570.000;
 - ✓ **After 5 years**, for holdings above this threshold.

French SCI

Key Tax Considerations upon Departure from France

1. Exposure to IFI (French Real Estate Wealth Tax):

Post-departure, non-residents remain liable for French wealth tax (IFI) on the value of SCI shares, based on the proportion of French real estate in the balance sheet and the individual's holding.

2. Exit Tax implications – analysis of asset composition:

The SCI may be caught by the Exit Tax depending on the nature of its balance sheet at the date of departure

- If **French real estate represents less than 50%** of the total gross assets, the company is not real estate-dominated and the shares may be taxed under the Exit Tax regime.
- Conversely, if **real estate \geq 50%**, the shares fall outside the Exit Tax scope.

3. Family home held via SCI – risk of French tax residence being maintained:

If the SCI owns the former main residence, keeping access to the property - even without formal occupancy - may raise doubts about the effectiveness of the departure. To secure the change:

- **Sell** or **rent** the property; or
- Sign a ***commodat* agreement** excluding personal use.

Construction Co

Tax Frictions in the Context of Departure

1. Exit Tax exposure:

Given that the individual owns **50% of the French construction company**, the shares may fall within the scope of the **French Exit Tax**, subject to the usual conditions (length of prior residency and shareholding value or control).

2. Professional activity in France – risk of ongoing tax residence:

As a material part of the individual's income originates from ConstructionCo, the French tax authorities may argue that:

- The individual continues to carry out a **professional activity in France**;
- Or that they retain their **centre of economic interests** in France.

Such elements can compromise against the effectiveness of the claimed change of tax residence.

3. Strategic recommendation:

To mitigate this exposure, it may be necessary to **relocate the company's place** of effective management to a third country.

This move must be consistent with substance: board meetings, strategic decisions, and control must shift abroad accordingly.

Trust Structure

Key Tax Considerations upon Departure from France

1. Exit Tax exposure:

Assets held through the trust may be subject to the French Exit Tax, even where the trust is discretionary.

➤ In such cases, deferral of payment may be available under the usual conditions.

2. Reporting obligations

- The departure of the settlor from France constitutes a declarable event under French tax law.
- A 2181-TRUST1 form must be filed to report this change, as it qualifies as a substantial modification of the trust's circumstances.
- Failure to file may result in a €20.000 fixed penalty per omission or delay.

3. Risk upon death of the settlor while still linked to France

If the settlor dies as a French tax resident, and the trust was created after May 11st, 2011, the trust assets may be subject to **60% taxation**, regardless of the beneficiary's residence.

The Liechtenstein perspective



Liechtenstein lump sum tax regime (in a nutshell)

The applicant must

- ✓ take up residence in Liechtenstein for the first time, or after an absence of at least ten years
- ✓ their center of vital interests must be in Liechtenstein
- ✓ not be a Liechtenstein citizen
- ✓ not be in permanent or regular employment in Liechtenstein
- ✓ live on income generated from personal assets

Annual Substitute Tax

Start of Taxation:

- ✓ Begins upon relocation to Liechtenstein

Tax Rate and Basis:

- ✓ 25% of worldwide annual expenditure
- ✓ Tax base = total cost of living (domestic and abroad)
- ✓ Not based on actual income or asset value

Minimum Tax:

- ✓ CHF 300'000/year
- ✓ Negotiable in practice (case-by-case basis)

Trust Distributions:

- ✓ Count as personal expenditure relevant for substitute taxation
- ✓ Increase the tax base
- ✓ Must be disclosed and coordinated with tax authority
- ✓ Reassessment possible if actual expenses are higher

Discretionary Trust & Lump-Sum-Taxation

- ✓ Mr. Leroy is both settlor and beneficiary of a discretionary trust that he established himself, his wife and children.
- ✓ Due to this dual role and potential influence, the trust assets are taxably attributable to him.
- ✓ The trust must therefore be disclosed in the lump-sum comparative calculation and may impact eligibility.

If you have any queries, please contact:

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