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Article : **How to deal with a French Usufruit, if you have one thrust upon you.**

17th December, 2013.

The scandalous lack of respect by HMRC of a European Community and European Union Property Right, protected as to its legal integrity under the Freedom of Movement of Capital provisions as such, is not addressed here. Please consult Peter for advice on whether HMRC have any justification for treating their Statement of position in the April Newsletter 2013 as law; and whether certain ill-informed assumptions by comparative lawyers merit the retort that they have forgotten to progress to the stage of "and contrast".....

It is essential for those having French *usufruit* rights and entitlement, rather than other jurisdictions, to review the wording used by their notaries to describe the various elements and operations involved in the creation and the continuing coexistence of these civil law property rights. In particular, to ensure that the correct translation can be applied to their terms in any confrontation with HMRC.

Peter has recently overhauled certain French documents and had them refiled to ensure that the French rights are correctly described so as to ensure that HMRC translators and their readership do not consider themselves entitled to rewrite the effect of the code civil.

The property interest known as a *Usufruit* can arise in many areas of French law:

The first is to the surviving spouse by statutory entitlement to a usufruit under the French civil code over the deceased's property where there are no children from a previous union. Children from their union are considered part of the civilian deal, and therefore take the nue-propriété rights. They are therefore already vested in the rights to income and enjoyment in the assets once the *usufruit* has terminated.

The remainder can be categorised as being by the will of man, or woman as follows:

The main form of usufruit is a usufruit which is extinguished by death. As it ceases to exist, it is of nil value. The *propriétaire*s are already vested as owners with their own rights as to income and enjoyment independently. No

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succession arises. That means in effect that where there is no succession, it should not be considered as a form of settlement or constitutive of an interest in possession over settled property, either under the legislation prior to 2006, or for that matter after it. The usufruit is a wasting asset, and the rate of decrease in value is only known in retrospective, by reference to nil value at death.

The other sets of *usufruits* are those retained or created for a fixed term. These, like the former, are wasting assets, but this time with a fixed rate of decline in value that is determined by the term on a linear basis.

A less frequent form of usufruit is what is known as successive *usufruits*. In this case, and only where it is specified to be a successive right, it survives the first owner of the *usufruit* right and is transferred to the next in line. The valuation on that succession follows a specific table, and in the case of the successor terminates at nil value on their decease, again by extinction. Again, after the last party to the successive *usufruit* dies, there is no right, it is extinguished on and by the last death.

In each case, it is essential to ensure that the correct documentation on transfers, on any successions and on its extinctions is filed. This is unusual in France, as deeds are only registered if absolutely necessary. The confirmation of an extinction is frequently left to the first operation or transaction following the *usufruitier*'s decease. In other words there is only a confirmation of ownership by the *propriétaires* when proof of title is needed.

It is however, possible to do so, and confirm that the usufruit has extinguished at nil value, and that there is no succession to it. Here care needs to be taken as notarial language is generally imprecise, as it relies upon the underlying principles governing the legal effects. Here the loose use of the verb "*succéder*" is frequent, rather than a more accurate form of wording that accurately reflects the extinction of the usufruit right and the fact that the owners are already vested in their rights of enjoyment by virtue of the law, not by any form of succession, as the English understand it.

Hence the need for the use of appropriate language, and the precedents Overseas Chamber has developed. These precedents can be put before French notaries, to disable HMRC's fatuous presumptions as to French law and principles by terms which do not give rise to ambiguity in translation.

In effect, most of the issues boil down to inadequacy of understanding by HMRC, assisted by cynical mistranslation to make the operation at law appear to be assimilated to a settlement, when in fact there is none.

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Anyone needing assistance or counsel on these issues is invited to speak to Peter for a consultation and advice.

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