French resistance

A change in the law presents a potential issue for English clients relying on a popular French savings product to avoid forced heirship rules, warns ***David Anderson***

David Anderson *is a solicitor-advocate and chartered tax adviser at Sykes Anderson LLP*

One of the most popular savings products in France, sold to French residents and with its own tax and inheritance advantages, is known as *assurance-vie*. It is widespread in France, with around one-third of families having a policy, and is heavily marketed to UK residents retiring to France.

In July 2012, the EU announced that individuals can choose the nationality law to govern their estates. The new rules will apply to deaths on or after 17 August 2015. It is likely that, from that date, many UK nationals resident in France will choose English law in their wills to apply to their entire estate, both in France and England. This raises some concerns about *assurance-vie* which have not so far been made known.

During the lifetime of the person who sets up the *assurance-vie* policy, there is no tax on money withdrawn from the policy – only on the growth in value of the policy. This is what you would expect, because you are simply being given your original money back. There are also other tax advantages. *Assurance-vie* policies owned by a deceased do not normally form part of their estate. Usually the policy stipulates a named beneficiary who receives the money in the policy. This is helpful if an individual wishes to get around France's forced heirship rules, and is often a selling point for, say, unmarried partners who have children from previous relationships, who would otherwise inherit the bulk of the deceased parent's estate. The name of the beneficiary can be changed at any time, in the same way as a will can be changed at any time before death. This is usually done by notifying the insurance company.

It is also possible to state in the policy that the beneficiary's name is lodged with a *notaire*, and is only to be divulged after death. This is to maintain complete confidentiality as to the beneficiary.

The proceeds of an *assurance-vie* policy are not liable to French inheritance tax unless the amount received by each beneficiary exceeds €152,500, when tax at 20% is due (increasing to 25% on any sums received above €902,838). This is done on a per beneficiary basis, and is helpful if the deceased wants someone not related to them to benefit, when a tax rate of 60% may apply.

THE IMPACT OF THE CHANGES

From 17 August 2015, UK nationals resident in France can choose to leave their entire estate under English law. It is a simple matter of the testator inserting a clause in a French will saying that English law is to apply to their estate. They can put it in their will now (and many people are doing so), though it will only apply if they die on or after 17 August 2015. This will mean that *assurance-vie* will become far less attractive to UK nationals moving to France, because they will not need to resort to it to get around France's forced heirship laws, as they can stipulate English law to apply to their estate.

LITIGATION

In a recent French case (*Cass Civ*, 10 Oct 2012 11-17.891), the deceased had taken out an *assurance-vie* policy with a named beneficiary. He left three children, and in his will stated that one of them, Catherine, was to inherit his *assurance-vie* policy. Her two siblings said that, as their deceased father intended the policy to be part of his estate, under French law they were entitled to share the policy equally with Catherine. The court decided in favour of the two children, concluding that the deceased's intention, expressed in his will, was for the policy to be part of the estate.

In French wills, usual practice is not to mention *assurance-vie* policies. They are irrelevant as they are not part of the estate. English law has no concept of *assurance-vie*, and most English wills have very comprehensive 'sweep-up' clauses, stating that any and all assets not specifically disposed of elsewhere in the will are to form part of the residue, and are bequeathed to stated persons. This is likely to include the *assurance-vie*, as it will be in the ownership of the deceased when the will is drafted, and is likely to overrule any named beneficiary given to the insurance company.

In the case of UK nationals moving to France, many who bought *assurance-vie* will have done so because their family circumstances are not totally straightforward. They will also be people who will find electing for English law to govern their estate to be superficially attractive because it solves the problem of forced heirship.

Disappointed named beneficiaries of the policy will find themselves in difficulty, as they will usually not be the residuary beneficiaries of the English will. There will be every incentive for the residuary beneficiaries to litigate in France, and require the administrators of the estate and the *assurance-vie* insurance companies to obtain court orders before distributing the estate or paying out the *assurance-vie* proceeds. Brokers who have sold such policies after the new EU rules were announced in July 2012 may also be vulnerable to a negligence claim from a disappointed named beneficiary if they have not advised the policy holder in writing about drafting an English will.