

Nicolas BRAHIN

Avocat

DESS Droit Bancaire et Financier

November 28, 2017, Nice

Bureaux secondaires:

14, rue Ernest Michel
34000 MONTPELLIER

Pensiamento, 27 - 3°
Izda. 28020 MADRID

Correspondants organiques:

LEGIPASS
8, rue Auber - 75009 PARIS
www.legipass.com

FINN LARSEN ADVOKATFIRMA
Algade 43, 1 - 4000 ROSKILDE
DENMARK
<http://www.advodan.com>

ADVOKATFIRMAN CONCILIUM HB
Hamngatan 6, Box 2253,
40314 GÖTEBORG, Sweden
<http://www.concilium.se>

**HORIZONS CHINA CORPORATE
ADVISORY**
1801 Lippo Plaza, 222, Huaihai
Middle Road Huangpu, SHANGAI
CHINA
www.horizons-advisory.com

TOR J. SIBBERN
Advokatfirma Sibbern MNA
Cort Adelers gate 8, 1515 Moss, Norvège
www.sibbernlaw.com

How to restructure own capital

Facing an emergence of the rivals, the life insurance loses progressively its «Swiss knife» status of the investments world.

STRATEGY It is a continues love story. The French people adore life insurance. Frankly speaking, because the investment offers an unequal status in terms of the capital transmission and allows to make investments on funds in euro, a UFO in the investment world. Investing their savings to these fonds, consumers are certain indeed, thanks to the «ratchet effect», not to lose their acquired ownings. However, several changes spoil the game: first of all, yield erosion of the funds in euro (1,80% the last year on average according to the firm Facts & Figures and the new decrease is expected this year). Then, the creation the uniform standard deduction (prélèvement forfaitaire unique) beginning from the 2018, which reinforces likewise an attraction of the securities account.

The first question arising for the investors: should they give up hope on the funds in euro? Being disappointing these last years the product is not exhausted. «The insurance agents should encourage the investors once again to bring savings to their fonds in euro as soon as the rate will increase

significantly, then they can appear to be more generous than today», - hopes Cyrille Chartier-Kastler, the president of the Facts & Figures. The clients of the private banks ask questions about a new tax system.

Most of them want to know if the real estate part of their life insurance (real estate investment trust (SCPI), lands) will be subject to the real estate tax (IFI), which will replace the solidarity wealth tax (ISF). According to the current condition of the text, it is the case: it is necessary to reintegrate to the real estate tax the quota of the real estate kept in the life insurance contract. «But there is no need to make quick decisions or make urgent trade-offs, the text is still neither definitely voted for nor validated by the Constitutional Council (Conseil constitutionnel)», highlights Xavier Richard, the director of the capital planning (l'ingénierie patrimoniale) department of the HSBC France. The other question: is it better to keep their stock portfolios (sicav) in the life insurance contract or in the securities accounts Equity Savings Plan (PEA)?

«Life insurance will stay an important device of the capital managing, but probably with a little bit less wide spectre than today», estimates Xavier Richards.

The «Swiss knife» of the investor, the life insurance witnesses an emergence of the new rivals. Keeping their stock portfolios (sicav) on the securities accounts or Equity Savings Plan (PEA), the private persons avoid paying the fee to the insurance agent (about 0,9%). As the fees are charged year after a year, in the last analysis they are quite heavy», highlights Cyrille Chartier-Kastler. The rate level, the assets valuation and tax reform will make the investors think first about their capital strategy. «There is no more evident choice. And the capital planning has become preponderant: for the given assets, depending on the investment conditions, the yield can vary from 1 to 3!», explains Meyer Azogui, the president of Cyrus.

The life insurance stays, however, unbeatable in the succession domain. In particular, for the big heritage. «Let's take an example of the couple who has three children and who transmitted to each more than 700 000 euro. In the frame on life insurance, the 31,25% will be imposed on them, whereas it will be 35% outside this contract», counts Xavier Richard. It also allows not to be imposed on a gain (after the cession of the stock portfolio (sicav) or of the shares) as long as the assets rest in the contract. Finally, for the consumers who has set up a ceiling strategy (the income taxes, solidarity wealth tax (ISF) and supplementary social security contribution (CSG can't represent more than 75% of the incomes et certain consumers try to limit the incomes to be imposed less), the life insurance is a good device. The incomes which are coming from the life insurance actually include a part of the capital, which limits the income taxation.

BRAHIN AVOCATS

Société d'Exercice Libérale à Responsabilité Limitée inscrite au Barreau de NICE

Bureau Principal

1, rue Louis Gassin 06300 NICE

Tel. +33 493.83.08.76 – Fax 04.93.18.14.37 – Email : contact@brahin-avocats.com

INVESTMENT An adoption of a uniform standard deduction on the life insurance will be profitable for one and disadvantageous for the others. But there is no reason to call into question its place in the estate managing. After twenty years of stability the taxation of the life insurance is facing the big changes with the introduction of the uniform standard deduction of 30% (prélèvement forfaitaire unique). The evolution which incites to revise the place of the life insurance but certainly not to wipe it off the map.

Which of the changes for the investments are already introduced?

First statement: the reform doesn't imply any changes for the already invested sums before the 27 September 2017. It saves the previous tax regime, and therefore there is no reason to go backwards. For the sums withdrawn from the contracts after 8 years, the insured persons continue to benefit an annual tax allowance on the gains of 4 600 euro and 9 200 euro for the couple being subject to the common taxation, then the rate of the exempting standard deduction of the reduced rate of 7,5% is applied. «To the extent where each redemption contains at the same time a part of the initial capital, which is not taxable, and a part of the gains, which is taxable, the possibilities of a withdrawal are much broader than those sums let believe», specifies Gerard Bekerman, the president of the Afer. A life insurance containing for example a half of the premiums payed and half of the accrued gains authorizes, thus, to a yearly withdrawal of 9 200 euro in the investor is single and 18 400 euro for the couple. It will satisfy a good number of needs of the complementary incomes, as this tax allowance is valid every year.

And what about the new remittance?

The same statement for the sums invested after 27 September since they do not exceed 150 000 euro. Still, since the withdraw is effected after 8 years, the investors will have the right for the tax allowance and a reduced tax rate of 7,5% on the fraction of the withdrawn gains.

Thus, the principal change concerns the new installments but only for the part exceeding 150 000 euro. In the reality, this threshold is applied not only to the new installments, but to the totality of the sums placed to the life insurance. So, the person who invested 150 000 euro before the 27 September, then 100 000 euros after this date will be subject to the two different taxation regimes for its withdrawals. The tax authorities will apply the previous rules to the first 150 000 euros and new rules to the newly invested 100 000 euros. It is an insurance agency liability to communicate the data to determine the part of gains withdrawn corresponding to those two compartments.

Thus, there is a principal change: the part of the gains included to the withdrawal of the contract fed by the sum exceeding 150 000 euro will be subject to a new uniform standard deduction of 30%, that is 12,8% of the tax against 7,5% which existed till the present moment. The increase of the tax for 5,3%, but which will be applied only to the fractions of the withdrawals higher than tax allowance (4 600 and 9 200 euro), as this tax «deduction» (franchise) remains.

Hence, the wealthiest possessors of the contracts of the life insurance will become the main victims of this tax hardening, but only if they process the withdrawals exceeding the tax allowance. In reality, they will be affected a bit: «In general, our clients ask us to settle the sum of their withdrawal on the sum of the tax allowance in order to not pay the taxes», explains Jean Malhomme, a responsible of the individual deposits in Axa. Besides, the persons which can become more probably a subject to taxation generally keep their money as the investment to the life insurance during all their life, so their relatives could benefit the important tax exonerations on the succession rights which are still effective.

Who are the winners?

There will be persons who will benefit from the reform: from now on, it will be applied a rate or 30% of the uniform standard deduction to all the new contracts, even for the withdrawal made during 8 first years. The profit will be very significant for the withdrawal effected before 4 years, to which the rate of 35% was applied, and now it will decrease to 12,8%. And for the withdrawal of the contracts lasting between 4 and 8 years, it will decline from 15% 12,8%. A modest gain, but still good to have it!

Thus, the reform will introduce an unexpected element; it will imply a taxation more beneficial for the life insurance for the short and average term, smaller tax rate than before. It sounds like an invitation to use a life insurance for the short-term deposits, for example in the guaranteed funds in euro, which, despite of the erosion of the performance, stay the most profitable security solution.

Nicolas BRAHIN,
Avocat au Barreau de NICE
nicolas.Brahin@brahin-avocats.com