

Nicolas BRAHIN
DESS Droit Bancaire et Financier
Université PARIS I

Barbara CASTANIE
DEA Droit Administratif
Université de Montpellier

Céline ZEKRI
DEA Droit Immobilier Public et Privé
Université de Nice

Avocats au Barreau de NICE

Cabinet BRAHIN avocats

ADVOKATFIRMA I FRANKRIG / LAWYERS OFFICE IN FRANCE

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Correspondant organique de :

Legipass
Avocats au Barreau de Paris
8, rue Auber - 75009 PARIS
Tel : +33 01 77 49 27 40 | Fax : +33 01 40 07 04 54
www.legipass.com

Advokatfirmaet Finn C. Larsen
Advokat au Barreau du Danemark
Algade 43, 1 - 4000 ROSKILDE
Telefon +45 4635 1515 | Telefax +45 4636 3747

In this article you shall find brief explications on how to use a French Real Estate Company (SCI) in order to transfer your property to the younger generations.

In the first place, it shall be noted that the SCI can be an excellent “tool to give” (I). However, where the older generation would like to pass on their property for tax purposes, they might also still want to keep the control of the property. For this purpose, “Golden Shares” in the SCI can be given to the older generation in order for them to have the majority in the SCI (II).

I. SCI – A TOOL TO GIVE

In the case of a donation, the basic figure is the case where ‘A’ donates a piece of real estate to ‘B’. Consequently, ‘B’ pays the due taxes (*droits de mutation à titre gratuit*). At the succession of ‘B’, ‘C’ receives the property and pays, in turn, and again, the same amount of taxes.

This can however be avoided through a **Gradual Donation (*donation graduelle*)**¹.

A gradual donation is a donation where the initial donor, ‘A’, donates an asset to ‘C’, through a donation to ‘B’. Whereas ‘B’ receives the asset in the first place, he has a prohibition to dispose of it and the obligation, at his own succession, to transfer it, in turn, to ‘C’, who was initially designated as the donee by ‘A’.

As a consequence, ‘C’ is considered to have received the property directly from ‘A’. However, when ‘A’ made the donation to ‘B’, ‘B’ already paid the taxes linked to the donation. ‘C’ must thus in principle not pay any taxes linked to the donation as he or she benefits of a tax credit of the same amount as paid by ‘B’. Nevertheless, it shall be noted that the donation taxes are due with regard to the family ties that ‘C’

¹ Article 1048 et s. du Code civil

has to the initial donor, 'A'. Thus, if the ties are more distant, it may be that the taxes that 'C' must pay are higher than the taxes paid by 'B' and that 'C' might have to pay the difference.

Paying the taxes two times can also be avoided through a **Residual donation (*donation residuelle*)**².

In comparison to the gradual donation, a residual donation does not oblige the donee ('B') to conserve the assets that the donor, 'A', has donated. 'B' must only transfer the remaining part of the donated assets to 'C' at his own succession. In this case, as above, 'C' is considered to have received directly from 'A'.

Residual donation of Real Estate – Example: 'A' donates a property of six floors in Antibes to 'B', with the attached obligation to transfer the remaining part of the said real estate to 'C'. However, 'B' sells four floors and buys a hotel in Nice. At the succession of 'B', 'C' will only receive the two remaining floors of the real estate in Antibes.

If 'A' would have donated shares in a SCI to 'B', then 'C' would have received the two remaining floors of the real estate in Antibes and the hotel in Nice.

Donation of Shares in a SCI– Example: 'A' creates a SCI and makes a contribution in the form of 80 % of the real estate he owns to the SCI. The remaining 20 % are sold to the SCI.

'A' will subsequently make a gradual or residual donation of the bare property of the shares in the SCI to 'B'. The sale price of the 20 % can serve to finance the taxes linked to the donation. When 'C' inherits 'B', 'C' will benefit of a tax credit as 'C' is considered to have received the shares directly from 'A'.

However, where the owners of the SCI would have decided to sell part of the property it holds and to buy another piece of property, these properties will remain within the SCI and 'C' will thus benefit, e.g. of both the two remaining floors of the property in Antibes and of the hotel in Nice.

Consequently, both the gradual and residual donations of the real estate to 'C' will only have been taxed once with a considerable tax economy and the share of 'C' in the succession of 'A' will not in principle have reduced. Where 'C' would not be in the same line of heritage as 'A', additional taxes must be paid.

II. SCI AND THE TECHNIQUE OF “GOLDEN SHARES”

Multiples voting rights

Parents who would like to donate a bigger part of their ownership in a piece of real estate, which they hold through a SCI, can feel reluctant to hand over the power in the SCI. Thus, it is useful to foresee in the Articles of Association of the SCI the existence of “Golden Shares” in order to provide the parents with the necessary powers within the SCI.

Example: a couple donates 80 % of the shares in a SCI to their children, also in order to make an economy concerning the Wealth Tax.

² Article 1057 et s. du Code civil

In order to preserve the majority in the SCI, a provision in the Articles of Association is inserted in order to multiply the voting rights of the shares held by the parents. By multiplying their voting rights by five (20 x 5= 100 votes against 80 votes) they will keep the majority.

In addition, at the succession of either parent, it can be foreseen that the 10 shares held by the surviving parent is multiplied by ten (10 x 10=100 votes against 90 votes).

It shall be noted that any such schemes must be considered temporary.

Consequently, the parents will keep the majority in the SCI that they have founded during a certain time and be able to fully enjoy their property during that time.

Priority rights on the benefits:

It can be provided in the Articles of Association of the SCI that certain shares will benefit of a larger, disproportional share of the benefits. However, such a provision must also be temporary.

Example: the parents hold 95 % of the shares in a SCI. However, they agree to give, during 5 years, 61 % of the benefits of the SCI to their children. The Tax Administration challenged this decision and considered it as an indirect donation. However, the Supreme Court³ approved the provision in the Articles of Association of the SCI. Indeed, as the Court considered that the parents had never benefited of the dividends that had been directly distributed to their children, the Court considered that there had not been a donation.

Consequently, this shows to be an efficient way to help out the children during a relatively short period of time.

Nicolas BRAHIN

Avocat au Barreau de Nice

nicolas.brahin@brahin-avocats.com

³ Cass. Com. 18 déc. 2012, n° 11-27745