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Monaco

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1. Introduction

The Principality of Monaco is a sovereign and independent state and has been organised under the form of a constitutional monarchy since 1911. With its area of only 1.98 km² it represents the second smallest country in the world, after Vatican City.

Monaco is not part of the EU but has been a member of the Council of Europe since 2004 and has a customs union with France and the EU after adopting the euro as its national currency.

2. Legislative framework

2.1 Taxation

(a) *Personal*

Thanks to its strategic position, the quality of its services, security and favourable taxation environment, Monaco is one of the most welcoming countries in the world for high-net-worth individuals. The domestic taxation system does not provide for any personal income tax on individuals (except for people of French nationality). Consequently, any individual resident in Monaco may receive income from a professional or employment activity, dividends and capital gains of domestic origin, which are exempt from any local tax.

Inheritance tax applies to assets located in Monaco, regardless of the domicile, residence or nationality of the deceased.

(b) *Corporate*

Monaco provides for a taxation system for commercial companies which generate more than 25% of their turnover outside of Monaco – the current corporate tax rate is 25%, but certain deductions can or may apply.

2.2 Succession

In 2017, new rules on private international law which aligned Monegasque

international succession rules with the international standards, and more specifically with the EU civil law.

Under these rules, the default position is that succession is governed by the law of the state in which the deceased is domiciled at the time of death. However, a testator may exercise a *professio iuris* by electing the law of his or her nationality to apply to his or her estate which would result in a freely disposable estate so long as his or her nationality does not provide for forced heirship rules.

Under Monaco law, the freedom for individuals to dispose of their estate upon death is subject to statutory forced heirship rules, which cannot be overridden by a will. The relevant estate consists of a 'disposable portion' and a 'reserved portion' which is determined by law, and which must go to the protected or forced heir or heirs, regardless of the provisions of the will.

The applicable inheritance tax rate will depend on the nature of the relationship between the deceased and the heir(s):

- spouse and direct beneficiary – 0%;
- partners under civil union (executed before a Monaco notary) – 4%;
- siblings – 8%;
- uncle, aunt, nephew, niece – 10%;
- other relatives – 13%; and
- unrelated beneficiaries – 16%.

2.3 Trusts

Monaco is a civil law jurisdiction. However, within the legal framework of estate planning, it has been a party to the Hague Trust Convention of 1 July 1985 on the law applicable to trusts and their recognition since 2007.

Monaco provides for a specific trust regime with its domestic Law No 214 of 27 February 1936, which: (i) allows foreign individuals, whose national law governs trusts (common law jurisdictions), to transfer and register an existing trust to Monaco; and (ii) provides for the possibility to create a new trust by will, if regulated by a foreign trust substantial law.

In order to transfer and register an existing trust to Monaco, a qualified Monegasque Jurisconsult must provide a legal certificate stating that the instrument of trust complies with the national law of the settlor (or of the testator). Thereafter, a duly approved corporate trustee is appointed from a list of trustees registered with the Monaco Court of Appeal.

The taxation of trusts in Monaco, whether living or testamentary ones, are subject to registration duties which are expressly provided by Section 7 of Law 214 and which range from 1.3% to 1.7%, according to the number of the beneficiaries:

- one beneficiary – 1.3%;
- two beneficiaries – 1.5%; and
- more than two beneficiaries – 1.7%.

These rates may be replaced by an annual flat tax of 0.2% if the settlor has expressly elected this option at the time of the formation of the trust.

The tax basis for the registration duties/annual tax is the aggregate value invested in the trust, except for Monegasque assets, which are subject to registration duties at the following rates:

- one beneficiary – 0.05%;
- two beneficiaries – 0.25%; and
- more than two beneficiaries – 0.45%.

The same duties will apply in case of assets represented by crypto assets.

3. Crypto assets

Monaco has created three steps to the formation of a legal framework regulating crypto assets:

- Law 1.383 of 2011 – regulates financial activities provided in Monaco under the auspices of the Commission for the Control on Financial Activities (CCAF), which, in general terms, provides that financial activity in Monaco is subject to:
 - administrative authorisation delivered by the government in compliance with the provisions of Law 1.144 of 1991; and
 - a financial licence delivered by the CCAF in compliance with the provisions of Law 1.338 of 2007.
- Law 1.491 of 2020 – relates to crypto token offerings, which cancels the previous minimum unit nominal value of the tokens.
- Law 1.528 of 2022 – regulates specific aspects of crypto assets, including the definition of digital and crypto assets under the Digital Provisions and Regulating the Activities of Service Providers on Digital Assets or Crypto Assets.

Law 1.528 specifies what types of service and crypto asset are considered to be regulated activities if undertaken in Monaco. It also provides the legislative tools for enabling existing holders of financial authorisations, obtained under the conditions of Law 1.338 to also provide crypto-related services such as asset allocation, management and consulting.

For those crypto activities which are ancillary to existing financial activities, the government of Monaco and the CCAF will ensure that all requirements are fully satisfied at the time of the application for obtaining the new authorisation together with the activity of the relevant company. These will include, but are not limited to: (i) the obligation to incorporate a Monaco company; (ii) the guarantee by the shareholders to have appropriate professional experience and commensurate skills; and (iii) the adoption of a demonstrable, risk-based

approach to ensure compliance with anti-money laundering and data protection obligations under Monaco law.

In addition to the regulatory provisions, Law 1.528 also contains collateral provisions with reference to anti-money laundering (Law 1.362 of 2009) and updated definitions for terms such as ‘non-fungible token’ and ‘Metaverse’ new technologies (Law 1.383 of 2011).

Companies established abroad and not authorised in Monaco are prohibited from carrying out any crypto activities in Monaco, including approaching Monegasque residents for the provision of services on digital assets or crypto assets.

Failure to comply with these regulations will result in administrative and/or criminal sanctions.

4. Anti-money laundering, corruption and financial crime prevention

Monaco has developed its own anti-money laundering legislation under Law 1.362 and the Sovereign Ordinance 2.318 of 2009. These regulations have been amended in recent years to meet the equivalent measures in the EU, as well as anti-money laundering directives and Moneyval recommendations.

In addition to non-financial service companies and professionals, banks and financial services companies (including crypto activities) are subject to anti-money laundering obligations. These include mandatory know-your-customer and due diligence checks, internal anti-money laundering organisation and reporting obligations to the anti-money laundering Monegasque authority (known as SICCFIN).

In the case of foreign legal entities and trusts, enhanced due diligence is required. Failure to comply will result in administrative and/or criminal penalties. Further, directors or employees of the relevant company or entity can be held personally liable for any administrative failures or omissions.

5. Crypto assets held in trusts and/or foundations

5.1 Legal status of crypto assets

Crypto assets have been expressly regulated by Law 1.528 of 2022 and are now assimilated into other financial assets and instruments, which results in the application of a strict regulatory framework.

5.2 Laws, regulations, administrative guidance and court cases

Law 1.528 of 2022 is the main regulation for crypto assets but its provisions must be applied in conjunction with: (i) Law 1.144 of 1991 (providing the regulatory system for new activities in Monaco); (ii) Law 1.338 of 2007 (providing for the regulatory system for financial activities in Monaco); (iii) Law 1.383 of 2011 (providing the regulatory system for new technologies); (iv) Law

1.491 of 2020 (providing the definition of digital assets); and (v) Law 1.362 of 2009 (providing for anti-money laundering regulations). There is no record of court cases regarding crypto assets.

5.3 Legal and practical issues regarding the inheritance of crypto assets

Crypto assets are subject to the same inheritance rules and tax duties applicable to other assets.

5.4 Legal and practical issues for a trust/foundation acquiring crypto assets

A trust or foundation acquiring crypto assets should ensure that the seller is a duly authorised entity under Monaco law.

5.5 Legal and practical issues for a trust/foundation regarding the custody of crypto assets

There are no specific rules applicable to a trust or foundation's custody of crypto assets. Simple ownership or custody of crypto assets, if not carried out on a professional basis, will not be considered as a regulated activity under the laws indicated above.

5.6 Anti-money laundering obligations

If the activity is carried out on a private basis, the trust/foundation is not, in principle, subject to anti-money laundering regulations. However, trustees or trust companies operating in Monaco will be subject to the anti-money laundering regulations, as provided by Law 1.362 of 2009.

5.7 Tax consequences of transferring crypto assets to a trust/foundation

For assets placed in a trust, other than Monegasque securities, a duty between 1.3% and 1.7% will apply, depending on the number of beneficiaries. For assets placed in a trust and entirely made of Monegasque securities, a duty between 0.05% to 0.45% will apply, depending on the number of beneficiaries.

5.9 Income and capital gains tax consequences of a trust/foundation trading crypto assets

Trusts or foundations trading crypto assets on a professional basis will be subject to the regulatory requirements indicated above; namely, obtaining an administrative authorisation and a financial licence. In such cases, the trust or foundation will be assimilated into a commercial entity and subject to Monegasque corporate tax.

5.10 Income tax consequences of a trust/foundation staking crypto assets

The trust or foundation will be subject to the regulatory requirements and Monegasque corporate tax.

5.11 Wealth tax consequences of a trust/foundation holding crypto assets

There is no wealth tax in Monaco.

5.12 Documentary requirements

There are no requirements under Monegasque tax laws.

This chapter 'Monaco' by Maurizio Cohen and May Lolli-Ghetti is from the title *Crypto Assets in Trusts and Foundations*, published by Globe Law and Business.

<https://www.globelawandbusiness.com/books/crypto-assets-in-trusts-and-foundations>