USUFRUITS AND IHT: A FRENCH PERSPECTIVE

Peter Harris[1]

Following the previous article on this subject[2], it appears that the British estates of deceased domiciliaries comprising a retained or purchased *usufruit* over French immovable property have been taxed on the basis of a reservation of benefit.

Whilst the previous article mentioned contradictory decisions of the Capital Office, some treating these as interest in possession, or settlements, others taking the view that they are not, the Inheritance Tax consequences of a miss-definition can be catastrophic, giving rise to double taxation without any credit for French estate duty, as the French system does not treat the transaction in the way in which the United Kingdom would "mistreat" it.

Under these circumstances, it is perhaps time to review the position and ask how does the French *usufruit* function in relation to the United Kingdom reservation of benefit rules. *Rumor crepit* that certain decisions of the CTO recently have led to French notaries being sued for professional negligence for not taking into account United Kingdom Inheritance tax rules when advising English clients on French estate planning. Viewed from the French perspective, this is quite craven. It is perhaps rather the English advisers to the Estates concerned who should be criticised for not having throroughly challenged the adverse CTO decisions.

Perhaps we should revert to basics. Since the decision of the House of Lords in *Wheeler v Humphreys* [1898] AC 506, *HL*, it has always been open to a person seeking to retain a property right when making a gift to do so, without making a

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1 Peter Harris is a Barrister at the Revenue Bar. He specialises in the fiscal and legal framework between France and the United Kingdom, and has had considerable success in the negotiation with the Inland Revenue concerning the transparency of French SCIs holding residential property. Along with others he participated in the debate leading to Budget Note 50 in the 2007 United Kingdom Budget and the announcement of retrospective legislation in the areas of Benefits in Kind on these entities. He may be reached at harris@clerksroom.com., where he is currently a door tenant.

2 Interests in possession, Settlements and *Usufruits*, A Foreign Perspective, OITR, Volume 13, Issue 2

reservation over the property. To quote *Simons* Taxes at § *I3.416*:

> '*If it is found that the donor, instead of reserving an interest in the property given, has retained and excluded from the gift some beneficial interest, the interest which he has retained is not a reservation in relation to the interest which he has given: it is simply something which was not included in the gift. The principle is that what a donor keeps back is no gift. HMRC state that a distinction between what the donor gives and retains can only be made where the retained interest is capable of subsisting at law or in equity as a distinct item of property*'.

The French *usufruit* being a *droit de propriété* is capable of existing at law, but certainly not in equity, as a distinct item of property. It is not included in the gift. Indeed, any notarial *acte de donation* will very clearly need to make the differentiation for any gift of the *nue-propriété* to be effective.

For those who do not have the definition of a French *usufruit* to mind, or have yet to deal with the method of *démembrement* involved, may I be pardoned for repeating the relevant part of my previous article, but commencing with a short *exposé* of the concept of *droit réel*:

The differential between a Droit réel and a droit personnel

Summary of the notion of French Property rights:

Firstly there is a distinction between patrimonial rights and extra-patrimonial rights. The *patrimoine* 'patrimony' is what belongs to a person, what can constitute his or her estate.

The criteria are:

Are these rights or are they not part of the patrimony which is the class of rights which can be valued in money or in money's worth by money of an individual or a legal person making up their assets and their liabilities, and that person's ability to acquire others?

Patrimonial Rights: Real Rights and Personal Rights

Droits reels: real rights or rights in rem:
A property right which is directly exercised by a person on or over a thing 'chose' (*res* in Latin, which is the root of the term, not the word real in the general sense).

It is a direct legal link between the active legal subject: the owner of the right, and an object: the thing on which the right is fixed. It is therefore not reliant on any other form of legal interest, as say an equitable interest is in relation to legal ownership.

These are sub-divided into two categories:

- *Droits reels*: The 'real' rights of entitlement and

- *Droits réels accéssoires*: Accessory real rights or real security rights.

The common denominator is that these rights are fixed on a thing, a *res*. From the perspective of retention rather than reservation, this means that the property right can be retained as such, and, further that the entire ownership does not have to be transferred subject to a reservation to give effect to the right. That is the flaw in HMRC's logic: fiscal rapaciousness is the mother of invention.

This resolves any specious argument adduced that the retention of a *usufruit* when making a gift of the *nue-propriété* is in fact a gift of the full ownership with a reservation of a benefit. For HMRC to argue that that is the case is little short of spurious invention and intellectually dishonest. To further argue that the full ownership is transferred by way of gift subject to a charge or burden; notwithstanding the fact that the deed of donation under French Law states entirely the opposite; is equally fallacious.

The principal real rights are divided into two categories:

1. Pure ownership, *droit de propriété*, and the other

2. Divided property rights, *droits de propriété démembrés*.

Note that the concept of ownership is itself a right.

The right of ownership, *droit de propriété*, is composed of three attributes:

1. User: the right of user of the thing;

2. Fruits: the right to the fruits or income produced by the thing; and

3. The right to abuse, *abusus*: the absolute right to dispose of the thing, by gift, sale, by not using it, or by destroying it.

Where either the user or the user and the fruits are separated from the ownership of the property, the reduced ownership is reduced to what is known as the *nue-propriété*.

The divided rights of ownership only comprise parts of these rights in varying proportions:

The *usufruit*: confers on the person entitled the user and the income, the *abusus* being retained by the person holding the remainder of the entitlement to the thing: *le nu-propriétaire*;

For example a *usufruitier* can sign a commercial lease of the property or a civil lease. However; the person having a *droit d'habitation* or *droit d'occupation* can only confer a civil lease over the property.

The *usage*, user: which confers on the person entitled the right to use the thing, and to take certain of the fruits, but only to the extent necessary for their needs, and not to extract further income;

Habitation: only confers the right to user, not to rent out on a commercial basis, and which is limited to family residential user;

The *servitude*: which permits an owner of one parcel to use and enjoy certain prerogatives over a neighbouring parcel: easement of right of passage, of drilling etc. The *servitude* is linked to the parcel, the one which benefits is called the *fonds dominant*, the burdened parcel, the *fonds servant*.
Servitudes can be overt, or hidden, continuous or discontinuous.

Emphytéose: which is a long term lease of a thing (18 to 99 years) and which the law treats for this reason as a *droit réel*, whilst the medium or short term lease is treated as a *droit personnel*.

The Construction lease is a form of *emphytéose*; and

Droits réels accéssoires: Accessory real rights or real guarantee rights:

These have no separate existence as such, but are accessories to personal rights or lender's rights. They are creditor's rights or guarantees which attach and are fixed to a debtor's chose or assets, and are therefore categorised as real rights.

Droits personnels: personal rights, rights in personam

The personal right (*droit personnel* or *droit de créance*) is a legal relationship between two or more persons, of which one, the obligee/creditor or active subject, has the right to require of another, the obligor/debtor or passive subject, a service, or to refrain from an action, or to provide an object : So the obligations are of three types : the obligation to give or assign, that is to transfer the property in the thing, the obligation to do something, the obligation not to something.

The term *créance* has a wider scope than the literal translation "loan" would suggest, it is a form of obligation.

Contrary to the *droit réel*, which attaches directly to the thing itself, the *droit personnel* can only be enforced against the person, and not directly on the thing, which means that, for example, a creditor cannot prevent the sale of the thing on the sole basis of an unsecured loan.

On the other hand a *droit personnel* can be added to a *droit* reel, right *in rem*, for example, a mortgage, which is accessory to the debt. The creditor may require and obtain a right *in rem* over the thing, by virtue of a mortgage or a lien over the thing, but not by virtue of the loan by itself.

Extra-patrimonial rights:

- Intellectual or immaterial property rights;
- Certain commercial rights e.g. the immaterial rights over a *clientele*;
- The rights of the individual person; Human Rights etc.

The *Usufruit*, the *droit d'occupation* and the *droit d'habitation* are *droits reels*, not *droits personnels*.

HMRC's argument as to reservation of benefit, rather than the correct analysis of a retention of a right, would only have a chance of being correct if these were *droits personnels*.

Previous analysis

To repeat my previous analysis

> *French property law, does not recognise trusts over French land on an internal basis, nor on a private international law basis. The quality of a*

trustee may be mentioned, but it has no legal significance beyond that. They may be applied, with caution, to French movables.

…

The reduction of property rights to money or to money's worth is the key to the civil law system, as is the issue of apparent ownership. It is the social value and impact that is regulated by law.

*A usufruit arises on what is known as a démembrement (deconstruction) of the pleine propriété (full legal ownership) into its civil law constituent parts, namely: the right to the use, the right to the fruits and the remaining right of property including the right of destruction and disposal of the "chose" that is the legal title to the asset in question [*not a chose in action*]. These aspects are the public aspects of the chose. The Civil law does not concern itself overmuch with the morality and ethics of property, as opposed to the contrary tendency in Equity. Figuratively, it is a little like cutting a camembert into portions, rather than the English method which is to retain the full legal ownership at one level and subject it to equitable rights, on a different dimensional plane of law. A usufruit is the combination of the right of user and the right to the fruits. It does not carry the right, automatically, to the capital gain arising on the sale or disposal or the property, although this can be agreed between the parties.*

The usufruit right exists separately from the remaining right of destruction or disposal. It can be for a fixed term, or for life. What is more, further deconstructed droits reels (real as opposed to personal rights) exist, such as a droit d'occupation, which do not imply a right to the fruits. The use of a droit d'occupation might avoid the issues considered in this article.

A usufruit can be granted, acquired, or sold. It cannot be put out of existence by a transfer for consideration to a bona fide purchaser for value without notice. In other words, it is outside the scope of equitable considerations.

The usufruit is a droit reel. The categories and types of these French property rights are closed, no more can be invented[3]*. It is not a personal right, unlike an interest in possession. In other words it does not depend for its existence on a higher or global property right as, by definition an equitable interest is required to do.*

…..…

3 *Even by the modern Anglo-saxon lawyer.*

> *Firstly, the usufruit being a French droit reel, is an independent legal real right and is not a creature of equity, dependent upon the legal title or estate and upon the supervision and intervention of the English Courts for its existence.*
>
> *It cannot therefore be analysed in an English manner as comprising an interest in the legal ownership of the property, based on an equitable obligation. This distinction has an effect on the valuation of the right. In France, for succession and donation purposes, the valuation of a life usufruit, un usufruit à vie, is calculated by reference to a statutory table, recently revised to take into account increased life expectancy and to the age of the usufruitier. The French system, including the tax system, operates on the basis that the right is extinguished on death or at its term, and is a wasting asset. The value is fixed by the parties in any contract for purchase, although the civil table can be used as a basis.*
>
> *However, the French system of Succession Duty and Wealth Tax has to operate by way of exception, and a statutory exception* [to the general law] *provides that the usufruitier is responsible for the Wealth tax, and is sometimes deemed to be the owner for estate duty purposes, although this deeming can be rebutted*[4]*. This does not square with the British Inheritance tax system, which is based on different assumptions as to property law and estate taxation. The UK principle is that the estate is valued as it stands at the moment immediately preceding the decease. On the other hand, the French system only taxes the transfer in the hands of the recipient, and at rates and allowances dependent upon the relationship which the recipient has with the donee or the deceased.*
>
> *Were the worldwide estate to be valued on the basis of the French legal method of valuation of the usufruit at the moment before death, it would certainly not be the whole value of the pleine-propriété. At most, it could only the value paid for the usufruit at its inception if acquired by contract, or its value according to the statutory table, if obtained by gratuitous transfer on its grant. There at the very least is an argument for some relief as against the inclusion of the asset for the full market value in the English estate. If the French principle was carried through to its logical conclusion, the usufruit at the moment immediately preceding death could arguably have no value at all, which would square with the French legal position that it is extinguished on death.*

It is therefore clear that from the perspective of French law, the *usufruit*, like any other form of immovable *droit reel*, can be retained without there being a reservation, under the principle set down by Lord Macnaughten in *Wheeler* and

4 *Quite simply, as it is no more than an extension of the rebuttable presumption of apparent ownership.*

reiterated by Lord Hoffman in *Ingram v IRC* ***[1999] STC 37 at 45*** as being the policy behind the legislation.

> '*What, then, is the policy of [FA 1986] s 102? It requires people to define precisely the interests which they are giving away and the interests, if any, which they are retaining. Once they have given away an interest they may not receive back any benefits from that interest. In* Lang v Webb[4]*, Isaacs J suggested that the policy was to avoid the 'delay, expense and uncertainty' of requiring the Revenue to investigate whether a gift was genuine or pretended. It laid down a rule that if the donor continued to derive any benefit from the property in which an interest had been given, it would be treated as a pretended gift unless the benefit could be shown to be referable to a specific proprietary interest which he had retained. This is the most plausible explanation …*'

The change in the legislation following Ingram, namely s. 102A does not change this analysis, as there is no "reverse" grant of a lease in a *donation de nue-propriété*. That would be entirely spurious, illogical and redundant.

So, with that behind the argument that the retention of a *usufruit* by a donor making a gift of the *nue-propriété* of a French immovable is no reservation, how can HMRC have arrived at the conclusion that it must be, with the result that an unsuspecting French notary finds himself the victim of IHTA, and his professional insurance company the banker?

Is it by application of the notion of a reservation of benefit to what is in fact and in law a retention, or worse, requalifying a concept of foreign law over its immovable property into a concept of English land law?

The key to this error may be an over-enthusiastic extension of article 43(2) IHTA beyond its wording, and in fact its stated purpose. Ethically, leaving the professional insurance policy of a French notary to pick up the IHT tab can only be described as craven.

Quid reservation of benefit?

Whilst it may have been superficially arguable that the first method of grant contains a reservation of benefit, this is manifestly not the case, as it consists of a carving up of the property into different rights, the estate of the donor retaining a reduced right, capable of valuation and disposal independently of the residual ownership rights.

There are two issues which can be raised:

1. Is a *usufruit* an interest in possession? And

2. Is its retention, grant or purchase out of the residual ownership, a settlement in any shape or form?

1. Is a usufruit an interest in possession?

It is trite English law that a present interest in present income is an interest in possession, when it concerns English property. The *usufruit* being both the right of user and the right to the fruits, it would appear to fall within the definition at first glance. On the other hand it is a *droit réel*, not a mere interest.

That does not mean that the same analysis can be applied to a foreign legal concept, outside the jurisdiction of the English Courts. There is a strong case that, without an equitable interest dependent upon a foreign legal ownership right, the English Courts cannot have any jurisdiction over the content of a foreign property right. That notwithstanding, they may have jurisdiction over one or more of the persons concerned in the event of say a constructive trust remedy being sought over foreign property[5]. However a constructive trust remedy is not a "settlement" by any stretch of the imagination.

2. Is its retention of a usufruit out of the pleine propriete, granting or transferring the right of disposal to another, a settlement?

The question may already have been answered. The purchase of the *nue-propriété* from an owner, leaving the owner with the residual real rights to the fruits and the use, cannot be a settlement. The gift of a part, without reservation, again hardly can be considered one. By definition a settlement is the transfer of ownership with a reserved right attached, not a transfer of a part, with no reservation.

In relation to a gift of the *nue-propriété*, exactly the same logic applies. The *usufruit* is retained. The fact that the French term employed is *réservation* does not change the underlying legal mechanics of the transfer, which appear to have gotten lost in translation.

Neither can the retention of a legal self-supporting perfected right defined according to the foreign law governing the immovable, be requalified into an obscure English conveyancing method, which even the IRS does not understand, unless educated.

5 *cf The European Court of Justice in the case of Webb - Case C-294/92 Webb v Webb [1994] ECR I-1717*

At the risk of repetition:

In another context, although 'settled property' is defined in the context of certain non-resident settlements and the 'connected persons' definition in TCGA 1992, s. 286(3), 'settlement' itself is not.

In *Roome and Denne v Edwards* (1981) 54 TC 359, Lord Wilberforce stated clearly that "... 'settlement' must be a situation in which property is held in trust". Aside that trenchant definition for the purposes of English law, this is clearly impossible in a civil law jurisdiction where the concept of beneficial ownership of property is anathema.

Imagine a moot at the OECD between HMRC and the French tax administration whereby CTO attempted to convince their French colleagues, who are in charge of the land register, to accept the constitution of trusts over French land. Whilst the case was a Capital Gains issue, the lack of definition in the TCGA legislation is comparable to that in the IHTA.

However, in s. 43 IHTA an attempt may have been made to override this:

> "*s. 43(2) Settlement means any disposition or dispositions of property, whether effected by instrument, by parol or by operation of law, or partly in one way and partly in another, whereby the property is for the time being–*
> *…. or*
>
> *(c) charged or burdened (otherwise than for full consideration in money or money's worth paid for his own use or benefit to the person making the disposition) with the payment of any annuity or other periodical payment payable for a life or any other limited or terminable period,*
>
> *or would be so held or charged or burdened if the disposition or dispositions were regulated by the law of any part of the United Kingdom; or whereby, under the law of any other country, the administration of the property is for the time being governed by provisions equivalent in effect to those which would apply if the property were so held, charged or burdened."*

However, a *usufruit* is not a charge, or a burden over the full legal ownership of property: it is a *droit* or a real right over property, and therefore falls outside the definition of a charge or burden "*whereby, under the law of any other country, the administration of the property is for the time being governed by provisions equivalent in effect to those which would apply if the property were so held, or charged or burdened*". S. 43(2)(c) is therefore inapplicable to a *usufruit*, as it is not a charge or a burden neither is the property "administered" in the sense of a

settlement. There is no administration, there is no probate involved: *le mort saisit le vif*. HMRC have therefore attempted to extend the provision beyond its scope.

The fact that the right is retained does not constitute a charge, or a burden on the part of the property right, *la propriété*, disposed of by way of gift consequential on a *démembrement*.

It is worth noting that the legislator at s. 43(2)(a) and (b) uses the term "held in trust" to define settled property. This would indicate that the underlying principle of s. 43 is indeed based on the existence of a trust, or a foreign property arrangement which is assimilated to one. Again, there is no concept of a trust over French land to which the *usufruit* can be assimilated.

s. 43(2)(c) by its wording can only apply to a disposition of property by which it is burdened or charged with a periodic payment or annuity. The French for annuity is *rente*. The *usufruit* is neither of these. It is the income right, not a charge or a burden. Indeed, in some circumstances where French children wish to have the full value of property, otherwise subject to a *usufruit* in favour of a surviving parent, one method for them is to apply to a court that the *usufruit* be converted into a *rente*. This right can be excluded by will. That in itself is proof that the *usufruit* is neither a charge nor an annuity in the sense of s 43(2).

The same argument applies where the *pleine propriétaire* grants a *usufruit* to another by way of gift. This is not equivalent to a charge equivalent to the payment of any annuity or other periodical payment payable for a life or any other limited or terminable period.

However, the last paragraph is a general one "…*or would be so held or charged or burdened*…" If the disposition were regulated by the law of any part of the United Kingdom; in other words including Scotland, but not the Bailiwicks of Jersey and Guernsey where the *usufruit* is still employed, albeit under the *affreuse* and debasing translation of "life enjoyment". The *usufruit* or *droit reel* escapes if the *usufruit* rights are acquired by one purchaser for valuable consideration from a third party, and the *nue-propriété* for valuable consideration by another.

There is no doubt that, taken out of context, the definition of 'interest in possession' given in *Pearson and others v IRC* [1980] STC 318 as bearing its ordinary natural meaning; a present right of present enjoyment of income, could prima facie comprehend a *usufruit*. However, that would imply a settlement, a trust, which cannot be the case under French law, unless s. 43(2)(c) can be invoked to deem one. In the author's view, it cannot without an effective rewriting of the section, as there is no trust, charge or burden over the full legal property; which itself is not transferred by the transaction.

The difficulty is that such a requirement would in fact mean double taxation in the United Kingdom of the French property: once on the death of the *usufruitier*, if domiciled in the United Kingdom, and secondly on the death of the owner. In France there would only be one tax point, on the death of the owner, as the *usufruit* is extinguished on death, without a succession duty charge, as there is no chargeable transfer: the iniquitous result is double taxation in the United Kingdom of the property on two disposals with no effective credit for one.

It is clear that the *usufruit* property right cannot be comprehended within the definition of an "interest in possession" under the English system, as it does not depend for its existence on an equitable estate out of the full legal ownership. What is more than clear is that a *usufruit* acquired independently for valuable consideration should not be treated as a part of a settlement. The term 'interest' simply cannot be translated by '*droit*' without falsehood, or an acceptance that the terms have different legal signification and effect.

The difference between a usufruit and a droit d'occupation

Here one initial point has to be perfectly clear. The French tax code does not have the effect of civil law *per se*. As detailed below, the French tax code is constitutionally not a separate or autonomous body of law, and with the only comparison to the English system which I will allow myself, a little like an equitable interest dependant upon the legal estate of the French constitution for its validity and very existence by way of exception.

The Civil Code is based upon principles of law, which remain for the most part unwritten, and it amends it in certain circumstances with a limited objective. In this case, the presumption merely applies to *usufruits* and not to the other types of *droit reel* which can exist over property, such as a *droit d'occupation*.

Further investigation into the French tax treatment of a *usufruit* reveals that the tax administration has had to have a statutory presumption inserted into article 751 CGI to the effect that where a deceased owned a *usufruit* over an asset, the asset is presumed to remain within the estate of the deceased for its full value, unless the contrary is evidenced or unless the *nue-propriété* was given by the *usufruitier* under notarised gift.

The provision was recently amended in article 14 of *Loi de finances pour 2008* following a recent decision of the *Cour de cassation*, on its scope. The Court had held that the presumption was maintained even in a case where the deceased had given money to the *nu-propriétaire* to acquire the *nue-propriété* for full value, at the time when the *usufruitier* purchased that right from the independent vendor. The law now provides that under certain restrictions as to form, a purchase by the *nu-propriétaire* for value can remove the property from this presumption, on the basis

not of the scope of the provision, but rather on the basis that evidence can be provided to the contrary:

> "*La preuve contraire peut notamment résulter d'une donation des deniers constatée par un acte ayant date certaine, quel qu'en soit l'auteur, en vue de financer, plus de trois mois avant le décès, l'acquisition de tout ou partie de la nue-propriété d'un bien, sous réserve de justifier de l'origine des deniers dans l'acte en constatant l'emploi.* "

"Proof to the contrary may in particular arise from a gift of money made by a deed having a legally binding date, irrespective of its author[6], with a view to financing, more than three months prior to the decease, the acquisition of all or part of the *nue-propriété* of an asset, subject to justifying the origin of the money in the deed laying down its object" (author's deliberately literal translation).

This amendment whereby the gift of money used subsequently in the purchase of the *usufruit* specifically rebuts the presumption was proposed by the administration following the Court de Cassation's decision.

The reason for this presumption, or deeming provision, is that succession duty had to be clarified as following the apparent ownership of the property, rather than the real ownership, subject to a rebuttal. Again, this has little to do with the English notion of a settlement. Any attempt by HMRC to assimilate this to a settlement is an intellectual falsehood.

The reason for this is the principle that the *législation fiscale* is not an autonomous code under the French constitution. The *Cour de cassation* has held consistently that the *loi fiscale* is not autonomous. It is no more than an exception to the principle prohibiting unlawful expropriation, automatically prohibited under the incorporation of the Convention of Human Rights into the French constitution. In other words, taxation is in principle unlawful under constitutional principles, and any exception to that principle has to be legislated in, as does any manipulation of general legal principle by the tax administration. As such, any difference between the tax and the legal treatment of a transaction has to be based on an express provision of the law; nothing is or can be presumed outside the law, written or not. The comparison between the two jurisdictions is illuminating.

Article 751 never applied to a *droit d'occupation*, which has never been capable of triggering the presumption in article 751 for succession duty, despite it being considered equivalent to a *usufruit* for Wealth tax purposes. Again, the principle of *propriété apparente* extends to the *usufruit*, because, from the civil law perspective, the *usufruitier* has the full right to rent the property out, both under commercial and civil leases. However, the holder of a *droit d'occupation* can only rent the property

6 The deed can therefore either be notarised or under private seal : *sous seign privé*

out under a civil lease, even this is not universally accepted, and therefore does not have the full apparent property rights capable of justifying taxation as owner. This is a major difference from the tax position in the United Kingdom, and it is perhaps time that the English Commissioners and the Courts took notice of the position elsewhere in Europe before allowing HMRC too much slack. IHT is not self-assessment

Capital Taxes Office, Nottingham have recently accepted that a purchased *droit d'occupation* does not constitute a settlement, as they could not show that it was. A *usufruit* as it falls within the same category of *droit réel*, should also escape this treatment for the reasons set out above. A sobering thought: French notaries are no longer proposing either SCIs or *démembrement* techniques in French estate planning to anyone with an English connection, simply because they are advised by petrified English lawyers that there are risks.

This, coupled with the rumours that English clients have brought professional negligence suits against French notaries for not having warned them about the possible complications of their own tax system, rather than taking the trouble of challenging assessments, mean that HMRC have succeeded in "rewriting" not only their own legislation, but also the perception of that of a civil law country in relation to its own law of immovable property.

Conclusion

The French transaction of donation of a part has an entirely different legal effect to, and therefore cannot be correctly analysed as, an interest in possession, without a degree of "deeming" and statutory misinterpretation going beyond that which might be permitted in a purely national context.

In the author's view, the *usufruit* under French law cannot be assimilated to a settlement or an interest in possession, as French law does not recognise trusts over French immovable property in its own internal law, even under private international law.

S. 43(2) IHTA is wrongly applied if interpreted as catching a *usufruit* retained by the owner on a gift or even a sale of the *nue-propriété*. It is clear that the acquisition of a *usufruit* at purchase from the vendor by one party and the *nue-propriété* by another for value is outside the charging provision of a settlement, and cannot be assimilated to a charge or burden.

Finally, overdue reliance may be placed upon the legal training of translators in this field. Certain French translators had taken up the habit of translating a *usufruit* as a Life Interest, and had therefore infected the ground with this uninformed mistranslation, despite the change to the Eurodic website. A French translator

attempting to impose a "pan-European" concept should have their draft returned to them requesting that a translation of *usufruit* by Life Interest be replaced with the correct English term, contained in the Oxford Dictionary, which is usufruct.

It is the author's opinion that, in the light and heat of logical, informed and thought through argument, the mist shrouding this issue can only evaporate, leaving the correct tax position evident. Consideration should be given to reclaiming any IHT paid under the pretences described. Perhaps an apology to the Notaries concerned might also not go amiss.