

## Buying a Vineyard in France? Some Considerations...

In the last few years there has been a marked increase in the number of wine-loving overseas investors seeking to purchase vineyards in France.

A host of considerations apply when making an overseas real estate purchase, particularly a high value investment such as a vineyard. Some of these considerations are self-evident, such as having advisers who can deal with language and cultural issues and making sure the seller actually owns the property being sold. Other considerations are more technical or abstract in nature, such as understanding the relevant laws and proper transaction structuring. The following are some of the key considerations:

### QUESTION 1 – WHO CAN (OR WOULD) PURCHASE A FRENCH VINEYARD?

French investment law does not generally restrict investment on the basis of citizenship or jurisdiction of incorporation of the investor so the short answer is that anyone can purchase a vineyard (or at least anyone with the necessary funds!). This is subject to obtaining government approvals which apply to all such purchases, and making certain administrative filings (discussed in greater detail under the relevant headings below).

Generally, the starting price for a French vineyard is likely to be in the order of a million Euros (approximately RMB 8 million), but this will depend on factors such as plot size, quality, reputation and whether the acquisition is just of real estate or of an entire business. Although not for everyone, there are many reasons why an investor might look to purchase a vineyard, ranging from a desire to consolidate related business interests (such as wine

distribution/retailing or restauranteering), to wanting to make a pure investment, to simply having a love of French wine.

### QUESTION 2 – ACQUISITION STRUCTURE – PURCHASE OF REAL ESTATE OR PURCHASE OF SHARES?

An important issue that will need to be decided early on is whether the underlying real estate of the vineyard will be acquired (and whether any other assets or business will be acquired) or, alternatively, whether the shares of the company owning the real estate will be acquired.

This decision, although made early on in the process, will have significant implications for the transaction. It will affect what consents and notifications are required, and the amount and types of tax payable. Ultimately, the final decision will depend on the investor's particular needs and requirements, as well as the particular circumstances of the transaction.

### QUESTION 3 – WHAT TAX CONSIDERATIONS APPLY?

As transaction structure is often driven by tax considerations you may like to bear in mind the following French taxes and related costs may apply to your purchase:

- **Sale of real estate** - A sale of real estate assets located in France is subject to French registration tax at a rate of 5.09%. Real estate transactions also require a deed to be prepared by a French notary, who charges additional fees in the region of 1.5% - 2.5% of the transaction value. In addition, sales of certain real estate assets (such as certain plots of land which could be built on) may be subject to French VAT. The top rate of

VAT is due to rise slightly next year and reach 20%.

- **Sale of a company** - Generally, the sale of an ownership interest in a French company is subject to stamp duty. The rate of stamp duty depends on the type of company (there are several types of French corporation), but is generally between 0.1% and 3% of the transaction value. If the company is considered a 'real estate company', then the rate of stamp duty is 5%.
- **Sale of assets of a business** - A sale by an enterprise of all of its assets and liabilities is considered a sale of a going concern. This is subject to French registration tax at a rate of 5% of the sale price. A sale of only some of the assets of a business is generally subject to French VAT although there are certain exceptions to this.

In addition, there may be tax considerations arising from tax laws in the buyer's home jurisdiction which need to be factored in to the transaction.

#### QUESTION 4 – WHAT GOVERNMENT APPROVALS ARE REQUIRED?

Depending on the transaction structure, a number of consents, notifications and approvals may be required. The buyer's legal adviser will need to work through these issues with their client to determine which of these items are applicable. An indicative list is as follows:

- **Approval of the Ministry of Agriculture**  
- Under French law, the prior approval of the Ministry of Agriculture is required for a non-French individual or company to own an agricultural business in France. A company falls into this category if either: (i) more than 50% of its shareholders are non-French nationals; or (ii) more than 50% of its share capital is held, directly or indirectly, by non-French nationals. The Ministry of Agriculture also determines the type of activities which the applicant is permitted to conduct once an operating licence has been granted.
- **Operating licence from the local Ministry of the Interior (*Préfecture*)** – French law requires that a vineyard holds an operating licence prior to engaging in agricultural activities. If a corporate entity holding such an operating licence is acquired and retains the necessary qualified personnel to operate the vineyard, the licence will transfer along with ownership of the

business and it will not be necessary to apply for a new licence. However, if the investment takes the form of an asset acquisition, this will constitute a change in operator and a new operating licence will usually be required.

As an operating licence must be obtained prior to completion of a transaction, an application can be made between signing and completion of the transaction (which can add to the time taken to complete the purchase). An application for an operating licence usually takes up to 4 months.

- **SAFER notification and pre-emption rights**  
– SAFERs (*Sociétés d'aménagement foncier et d'établissement rural*) are public organisations with pre-emption rights to buy most real estate currently or potentially used for agriculture and related agricultural buildings or moveable assets. There are a number of SAFER across France which operate in relation to their respective regions. The purpose of the SAFER system is to avoid farming monopolies and over-speculation in agricultural land and to reorganise land parcels in order to enlarge farms that were previously below the threshold of profitability.

As such, the relevant SAFER has jurisdiction over agricultural real estate, including vineyards, and must be officially notified of a relevant sale so that it can decide whether to exercise its pre-emption rights. Although this is not strictly a 'consent', if the SAFER decides to exercise its pre-emption rights then SAFER will purchase the land in place of the would-be buyer, thereby frustrating the purchase. This therefore needs to be closed-off as part of the transaction. A relevant transaction structuring point is that a transfer of shares in a company owning real estate will not be subject to a SAFER pre-emption right.

It is possible to require in the purchase documentation that obtaining necessary consents is a condition precedent to the completion of the transaction. If this approach is adopted, it will mean there is a time lapse between the signing of deal documents and the closing of a transaction.

#### QUESTION 5 – ARE THERE ANY OTHER REQUIREMENTS FOR FOREIGN BUYERS?

For non-EU investors, the following declarations may be required if the respective criteria are met (although these are simply declarations and no consent is required):

- If there is an investment in real estate in excess of €1.5 million (approximately RMB 12 million) or an investment in agricultural land in order to operate a vineyard, a declaration must be filed with the French Ministry of Finance and Economy at the time of completion of the investment.
- If the investment is for more than €15 million (approximately RMB 120 million) and results in the investor owning more than 10% of the capital/voting rights of a French company or more than 10% of a piece of real estate, a declaration must be filed with the Banque de France (France's central bank) within 20 days of completion of the investment.
- If the investment involves the acquisition of more than 33.3% of the share capital/voting rights of a French company (either directly or at a higher level in the corporate group, such as by acquisition of its parent entity), a further administrative declaration to the Ministry of Finance and Economy is required. This is not required if the acquisition is of the underlying agricultural land rather than shares in a holding company.

adviser has the experience necessary to effectively progress the transaction.

Additionally, if the transaction involves a French company to which the buyer is appointing a legal representative (and potentially other officers and directors, depending on the type of corporate entity) and the appointed person is both: (i) a non-EU national; and (ii) not a resident of France, then the activities of the legal representative must be declared to the local Ministry of the Interior (*Préfecture*). There is no such requirement for EU nationals. Alternatively, if a legal representative wishes to reside in France, a temporary residence permit is required authorising such person's business activities.

## Conclusion

As should be evident from the above, there are a multitude of issues to consider in relation to the acquisition of a French vineyard and the five questions discussed in this article are only a starting point.

A potential investor should make it a priority to instruct a legal adviser at an early stage of the process, making sure that their legal adviser can provide language support and cultural experience in both France and their home jurisdiction and that the

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