

February 2011

These notes have been updated in line with the **Loi de Finances 2011** and **Loi de Finances Rectificative 2010**.

RE: FRENCH PROPERTY

SUBJECT: FRENCH CAPITAL GAINS TAX (CGT)

We look here at French CGT rules applicable to disposals of privately-owned real estate, excluding business assets.

These rules primarily concern disposals of French properties, but may also apply to the sale of a French resident's foreign property. This is the case whenever the foreign property is located:

- ▶ in a territory with no Double Taxation Agreement (D.T.A.) with France, or
- ▶ in a country with a D.T.A. allowing for a tax credit in France equivalent to the foreign tax (e.g. United Kingdom).

CGT DECLARATION AND PAYMENT

Gains made on the sale of a residential property are subject to the private capital gains tax regime. There is no CGT payable on a property transfer by inheritance or gift.

CGT on the sale of a French property is assessed and declared via forms 2048 IMM or 2048M and deducted from the selling price by the *notaire* on registration of the sale.

French residents selling a foreign property need to submit a CGT return (form n°2048-IMM) with payment within two months of the sale, unless the gain is exempt by a D.T.A. or French law.

FRENCH CGT RATES

- ▶ **19%** is the CGT rate which applies from 2011 (instead of 16%) to Residents of France or another E.U. country + Iceland and Norway, who own a property directly or via a company whose profits are subject to income tax.
- ▶ **12.3%** social contributions (*prélèvements sociaux*) are payable in addition to the 19% CGT by residents of France. **Non-residents are NOT liable for these.**
- ▶ **33.1/3%** CGT rate applies to:
 - ▶ Other non-residents (even if they are Nationals of France or another EU country + Iceland and Norway), who own a property directly or via a company subject to income tax
 - ▶ Foreign companies subject to corporation tax (even if their head office is in the E.U).

EXEMPTION FOR PROPERTIES UNDER €15,000

This exemption limit applies to each property sold separately (i.e. non-adjacent or sold to different buyers).

GAIN CALCULATION - EXEMPTION FOR PROPERTIES OWNED FOR 15 YEARS

The amount of the gain depends on the base cost of your property. The costs are not indexed for inflation.



To the initial purchase price, you can add purchase costs (or 7.5% default amount) and works expenses for reconstruction, extension or improvement (or 15% default amount after 5 years' ownership, regardless of whether expenses were really incurred or deducted for income tax).

It is up to the owner to provide the notary with adequate proof of payment and contractors' invoices for deduction of real purchase cost and/or works expenses instead of default amounts,

N.B. Works must have been carried out by registered artisans or contractors. Moreover, the expenses must not already have been deducted for income tax purposes (including via a set abatement under a micro-regime). Allowable purchase and refurbishment costs should in principle be reduced by any depreciation previously deducted against letting profits.

The gain resulting from the difference between the sale price and the base cost of the property is then reduced by 10% for every complete year of ownership after the 5th. **Thus a property held for more than 15 years is totally exempt.**

Finally, a fixed allowance of €1,000 (€2,000 for joint owners) is deducted and the resulting gain is taxed.

MAIN RESIDENCE EXEMPTION

A gain arising on the sale of the main residence is exempt. The property has to be effectively used as the **main residence on the day of disposal** to qualify for exemption.

There is no condition of minimum time residency. The 5-year rule once applicable when a property had been previously used as a secondary residence no longer exists.

Parts of the property that are let out or used free of charge by relatives or third persons, and outbuildings other than those which are adjacent and necessary to the main residence do not qualify for main residence exemption, even if sold simultaneously.



N.B. The rate goes up to **50%** for residents of **Non Cooperative Countries or Territories**.

N.B. Your French home cannot be regarded as your primary residence unless and until you are a tax resident in France. Tax residence is evidenced by timely filing of French income tax returns.

Properties which were occupied as a main residence until they were put on the market, qualify for exemption provided they are sold within 1 year (2 years for 2009 and 2010 disposals) and were not let out.

The exemption may extend to a property still under construction in exceptional circumstances (e.g. divorce, separation, invalidity, death, professional transfer).

The exemption applies to shares in a real estate company holding the shareholder's main residence.

A fixed barge (*peniche*), i.e. not sailing and subject to *taxe foncière*, qualifies for exemption when used as main residence.

EXEMPTION OF A NON-RESIDENT'S FRENCH HOME

There is a particular CGT exemption for non-residents of France who are nationals of EU countries (plus Iceland and Norway). Other non-residents who are able to invoke a non-discrimination clause may also benefit from this specific exemption.

It applies to the sale of a French home, subject to a limit of 1 property (2 in 2010) sold after 2006, on the following conditions:

- ▶ the owner was a tax resident of France for at least 2 years in a row at some time,
- ▶ the owner had free use of the property on 1 January of the year prior to the year the sale is made (which excludes rented properties).

Moreover, the second property must be sold more than 5 years after the first one and be the sole French property at that date.

Two-year tax residency is evidenced by income tax assessments or assessment for *taxe d'habitation* as the main residence.

A CGT return still has to be submitted in this specific case of exemption (unless the 15-year exemption also applies).

This exemption does not apply to Non-residents who are shareholders in a *Societe Civile Immobilière* (SCI).

APPOINTMENT OF TAX REPRESENTATIVE

If the sale price exceeds €150,000 and the property was owned for less than 15 years, non-French residents (including non-resident shareholders of French SCIs) are required to appoint a French Revenue approved tax representative, even in case of a capital loss.

The accredited tax representative will do the calculations and guarantee payment of any tax due.

The cost of this tax representation is deducted from the selling price for calculation of the capital gain.

WHEN THE OWNER IS A COMPANY SUBJECT TO CORPORATE TAX

The capital gain calculation rules differ depending on tax residency:

If the company is based in an E.E.A. state (E.U. + Norway and Iceland), for disposals after 1/3/2010, the rules are those applying to French companies subject to *impôt sur les sociétés* (IS).

For other foreign companies, the capital gain is the difference between the sale price and the acquisition price effectively paid by the company, increased by construction works (duly justified with invoices, proof of payment and provided they were not deducted for tax already), **diminished by 2% for each complete year of holding**.

When the reduced corporation tax at 15% (instead of 33 1/3) is applicable to its annual profits, repayment of the excess tax can be claimed by the foreign company.

*Taxation is a complex subject.
Full independent advice on
the particular facts of a case
should be sought.*

*Kindly note that our firm provides
fiscal counsel only to clients for whom
we prepare regular tax
declarations.*