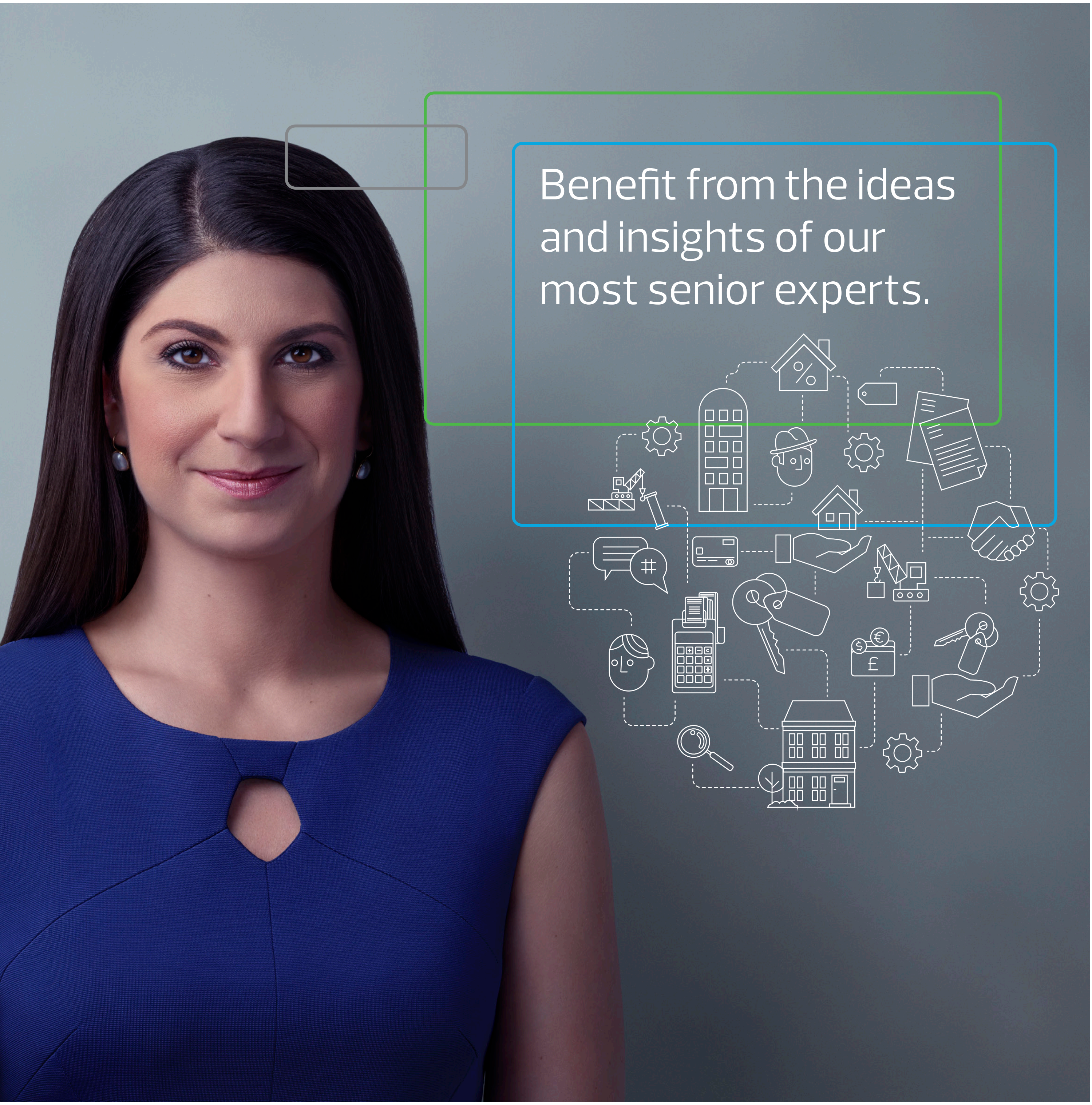


REAL ESTATE TAX GUIDE

FRANCE

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

RSM

QUICK OVERVIEW OF FRENCH REAL ESTATE

Rental income and capital gains of French real estate

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	*Rental income* Capital gains	Individual income tax Real estate profit tax	31.2% – 62.2% Up to 36.2%
Non-resident individual	*Rental income* Capital gains	Individual income tax Real estate profit tax	37.5% – 62.2% 37.5% – 62.2%
Resident company	*Rental income* Capital gains	Corporate income tax Corporate income tax	Up to 31% Up to 31%
Non-Resident company	*Rental income* Capital gains	Corporate income tax Corporate income tax	Up to 31% Up to 31%

Rental income

Individuals

Resident individuals

Introduction

Rental income is taxable as ordinary income and should be disclosed in tax returns on an annual basis.

Basis to tax

Rental profits are determined by the difference between revenues and expenses (*régime réel*). Nonetheless, it is possible to benefit from a fixed reduction of the tax basis (*régime micro*). In that case, expenses are not deductible. In consequence, the regime is potentially advantageous if the amount of deductible expenses provides a worse result than the reduction of basis.

If the estate is rented without furniture, then:

- For income of less than EUR 15.000, it is possible to opt for taxation on 70% of the income (*régime micro*).
- Otherwise, all of the income is taxed after deduction of the expenses (*régime réel*).

If the estate is rented furnished, then:

- From less than EUR 70.000, it is possible to opt for taxation on 50% of the income (*régime micro*);
- Otherwise, all of the income is taxed after deduction of the expenses (*régime réel*).

Rate
The progressive rates of personal income tax are applicable, from 0% to 45% (the latter being applied to very high incomes) plus 17.2% of social contributions.

Non-resident individuals
Non-residents are taxed at a minimum rate of 30% of income tax. The social contributions are reduced to 7.5% instead of 17.2% for non-residents who pay social security in a European Economic Area member state.

Resident Companies

Introduction
Rental income is taxed as business income.

Liability to tax
Rental income earned by companies is subject to corporate income tax as business income.
The French corporate income tax applies to companies that have an active business in France (companies established in France and foreign companies' permanent establishment located in France).
The French corporate income tax also applies to benefits for which taxation is attributed to France by tax treaties.

Basis to tax
For 2019, business income up to € 500.000 is subject to tax rate of 28%. Profits of more than € 500.000 are subject to a rate of 31%. A specific reduced corporate income tax rate of 15% exists for small and medium business and applies up to € 38,120.

Non-resident companies

Capital gains

Resident individuals

Introduction
Capital gains on the sale of real estate are taxed at a fixed rate after application of an allowance, depending on the holding period of the estate (see below).

Basis of tax
Capital gains may be partially taxed according to the holding period.

Fixed corrections must be applied to the operation (in absence of justification for actual costs incurred):
- Fixed 7.5% for acquisition expenses must be added to the acquisition price;
- Fixed 15% for works must be deducted from the cession price.

Exonerations
The sale of the main residence is exempted from tax.

The first sale of a residence in order to invest the capital gain into the acquisition of a main residence is also exempted.

Otherwise the allowance is a reduction of the tax basis, of a certain percentage as follows:

Holding period	Percentage of basis reduction applicable yearly	
	For income tax	For social contributions (Social Security Code)
Less than 6 years	0%	0%
From 6th year to 21st year	6%	1.65%
22nd year completed	4%	1.6%
Beyond 22nd year	Total exoneration	9%
Beyond 30th year	Exoneration	Exoneration

Rates
Capital gains are taxed at a fixed rate of 19% plus 17.2% (social contribution on patrimony revenues). Additional rate of 2% to 6% applies to capital gain exceeding EUR 50.000.

Non-resident individuals

Non-residents are treated the same way as residents. There is an exception for non-residents who pay social security in an EEE member state: social contributions are reduced from 17.2% to 7.5% (*prélèvement de solidarité*).

Non-residents must appoint a tax representative in France if the sale price exceeds EUR 150.000, unless the holding period was 30 years or more (tax treaties can suppress that rule).

Companies

Introduction
Capital gains and losses realised on fixed assets by companies liable to corporate income tax are taxable as business income in accordance with ordinary law.

Liability to tax
As described above, for 2019, business income up to € 500.000 is subject to a tax rate of 28% and profits above are subject to a tax rate of 31%. A specific reduced corporate tax rate of 15% applies for small and medium business up to € 38,120 of benefits.

A specific reduced tax rate applies in certain circumstances:

- Capital gains on real property realised by listed real estate investment companies (French "SIIC") are subject to a tax rate of 19%.
- Capital gains on the sale of professional premises converted into dwellings, or building land on which dwellings are built, are subject to a reduced tax rate of 19%.

French VAT & transfer taxes

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	*Rental income* Transfer of real estate services	Value Added Tax Transfer Taxes	20% Up to 5.70%
Non-resident individual	*Rental income* Transfer of real estate services	Value Added Tax Transfer Taxes	20% Up to 5.70%
Resident company	*Rental income* Transfer of real estate services	Value Added Tax Transfer Taxes	20% 5%- 5.09%
Non-Resident company	*Rental income* Transfer of real estate services	Value Added Tax Transfer Taxes	20% 5%- 5.09%

Value Added Tax

Individuals

Introduction
Value added tax is a tax based on the increase in value of a product or service at each stage of the supply the chain.

Liability to tax
If a company or an individual performs commercial or professional activities in France, it will be in principle subject to the VAT.

The supply and lease of buildings within 5 years of its creation, as well as land plot transfers, are subject to VAT at a rate of 20%. The supply and lease of old immovable property (buildings after 5 years of its creation) are in principle exempt of VAT. However, when the sale is realised by a professional liable to VAT (either company or individual), an option to VAT is possible. The same rules apply in case of transfer of property rights on immovable property (bare ownership, usufruct, etc).

Basis of tax
VAT is in principle paid by the seller at a rate of 20%.

Interaction with transfer tax
In principle, if VAT is charged because a newly created building is sold within five years after it is built, or in case of VAT's option, the transfer of the real estate is subject to transfer tax at the reduced rate of 0.70%.

The same rules as for individuals apply to companies.

Transfer Taxes

Individuals

Introduction
Transfer tax is a tax on any transfer of real estate or real estate company's shares. Rights on real estate are assimilated to real estate.

Liability to tax
The transfer of real estate located in France or abroad is subject to transfer tax if it is carried out by a French tax resident. Transfer tax applies only to the transfer of French real estate if carried out by a non-resident.

Basis of tax
The basis of tax is the price if the real estate is transferred against payment and the market value in other cases.

Rate
The rate is 5.09 – 5.80% for real estate located in France (variable according to where it is located) and 5% for real estate located abroad.

Inheritance / gift tax
Inheritance and gift tax are levied at progressive rates between 5% and 45% between relatives in direct line (parents / children) after application of an allowance of EUR 100.000 per parent, per child.

Companies
The same rules apply as for individuals.

French Local taxes

Taxpayer	Basis of tax	Tax levied	Tax rates
Resident individual	Market value	Municipal Tax	Depend on the municipality
Non-resident individual	Market value	Municipal Tax	Depend on the municipality
Resident company	Market value	Municipal Tax	Depend on the municipality
Non-Resident company	Market value	Municipal Tax	Depend on the municipality

Individuals

Introduction
Taxe foncière (tax on ownership of real estate) is a communal tax on the ownership of real estate.

Liability
Ownership of a real estate on 1 January of the year considered makes one liable to this tax for the entire year.

Rate
The rates are fixed by municipalities.

Companies

Introduction
The Local Economic Contribution is a local tax based on two components: The Business Premises Contribution (French "*Contribution Foncière des Entreprises (CFE)*") and the contribution on the company's value-added amount (French "*Contribution sur la valeur ajoutée des entreprises (CVAE)*"). The latter will not be developed because it is not a real-estate-based component of the tax.

Liability to tax
Business Premises Contribution applies to any habitual professional self-employed activities realised in France are subject to Business Premises Contribution any lease and sublease activities on immovable

properties. The reference period is the penultimate year preceding taxation or, if the fiscal year does not coincide with the civil year, the last fiscal year of 12 months.

Basis of tax
Business Premises Contribution is based on the rental value of real estate properties liable to French property tax ("*taxe foncière"*) owning by the company within the referential period. The Business Premises Contribution base is composed of the rental value (less 30% for industrial establishments) which the taxpayer used for business purposes during the reference period. The business premises contribution is calculated by multiplying the tax base (less reductions and allowances) by the rate fixed by each commune.

French net Wealth/ worth taxes

Taxpayer	Basis of tax	Tax levied	Tax rates (2019)
Resident individual	Net value of real estate	Individual income tax	0.5 to 1.5%
Non-resident individual	Net value of real estate	Individual income tax	0.5 to 1.5%
Resident company	Not applicable	Not applicable	Not applicable
Non-Resident company	Not applicable	Not applicable	Not applicable

Individuals

Introduction
A wealth tax (*impôt sur la fortune immobilière*, *IFI*) is levied on the holding of real estate only by individuals (it was levied on the total wealth including movable property, before 2018).

Liability
Resident individuals are subject to this tax when their worldwide net real estate wealth exceeds EUR 1.3 million. Non-resident individuals are subject to this tax when their French net real estate wealth exceeds EUR 1.3 million.

The net real estate wealth is constituted by the difference between the market value of the estates and the deductible expenses (e.g. interests of a loan).

Basis of tax
Value of real estate exceeding EUR 800.000.

Rates
Progressive rates from 0.5% to 1.50%.

Vehicles for French real estate

Commonly used vehicles for French real estate

Limited
The so called "SARL", the French limited liability company (*société à responsabilité limitée*), is the most frequently used vehicle for the ownership of French real estate. The equity is divided into shares and the shareholders of the SARL are not personally liable for the business debt. Profits made by the SARL itself are subject to the corporate income tax at a normal rate.

Partnership and joint ventures
Investments in real estate are often done on a collective basis by some of the entities and/or individuals. For French tax purposes, there is no distinction between taxation of partnerships and joint ventures.

Limited partnership
A typical limited partnership is the SAS ("*Société par Actions Simplifiée*). The SAS shares are held by two types of shareholders, the managing partners and the limited partners. The managing partners bear unlimited liability, while limited partners are only liable with the amount of their capital's contribution. The SAS is usually used for its flexibility.

The SAS is treated as a corporate entity for tax purposes and subject to corporate income tax at a rate of 15% / 28% / 31%. An option for the French personal income tax regime is possible for small and medium enterprises. If the option is applied, the SAS is treated as a transparent entity for tax purposes.

Transparent partnership
Partnerships can be structured as tax transparent entities. The profits and losses will hereby be allocated directly to the partners.

Foreign partnership
The residence of a partnership is determined by the place where the crucial decisions are made. Usually, the residence is the place where all partners meet. If a foreign partnership carries a permanent establishment in France, the benefits realised through this establishment are liable to corporate income tax in France, or the partners or subject to French personal income tax. French real estate will usually lead to a permanent establishment in France, but this is not the only possibility.

Trust
The concept of trust is not recognised under French law. However, the French "*fiducie*" regime is very much alike. The term "fiducie" take its roots in the latin "*fidus*" meaning "trustworthy". The French "*fiducie*" is subject to transfer taxes (or to VAT if the settlor is subject to VAT) and property taxes. Its benefits are taxable at settlor's level at corporate income tax (if the settlor is a company) or at personal income tax (if the settlor is an individual).

If any of the settlor, the trustee or the beneficiary is a tax resident of France, a declaration of constitution of trust must be made by the trustee stating the identity of the settlor(s) and beneficiary(ies), the contents of the contract and the functioning rules of the trust.

An annual statement must be made:
- If any of the settlor, the trustee or the beneficiary is a French tax resident: a detailed inventory of everything contained in the trust must be provided by the trustee;
- If none of the settlor, the trustee nor the beneficiary is a French tax resident: a detailed inventory of all French goods and rights must be provided.

Specific advice should be taken when considering creating and using a trust.

Specific real estate vehicles for French real estate

Sociétés civiles immobilières de location (real estate rental company)
This type of company is generally chosen by individuals to manage their real estate. It is a patrimonial structure, opposed to professional / commercial company.

This type of company can be subject either to:
- Personal income tax: by default, the company does not pay corporation tax, but the benefits or losses are taxed directly in the hands of the associates, at the personal income tax (tax transparency). See "Rental income" for taxation of the benefits;
- Corporation tax: the company can opt for corporate income tax.

Sociétés d'investissement immobilier cotées (listed real estate investment companies)
These companies aim at buying and building real estate in order to give it to rent. They can opt for an exemption of corporate income tax on the fraction of benefits corresponding to rental income, capital gains, and dividends from subsidiaries. This type of company has very special rules. The option for this type of structure requires deep analysis.

Organismes de placement collectif immobilier (OPCI) (real estate investment funds)

Sociétés de placement à prépondérance immobilière à capital variable (real estate investment company with variable capital)
These companies are exempted from corporate income tax. They are exonerated from the 3% tax on immovable property. The income of these shares cannot benefit from the dividend allowance of 40% but the income is treated as a dividend nonetheless. It is consequently submitted to the progressive rate with the global income (rate from 14% to 45%). The capital gains on these shares are treated as capital gains of investment.

Fonds de placement immobilier et fonds professionnels de placement immobilier (real estate funds)
They don't have legal personality, so they are exonerated from corporate tax. The incomes collected by these funds keep their nature (unfurnished rental income, commercial income if rented furnished, dividends if they own shares in other real estate companies, capital gains, etc.) and are taxed in the corresponding category in the hands of the individual taxpayer, meaning it is submitted to the progressive rates of income tax (14% to 45%).

ACQUIRING FRENCH REAL ESTATE

DIRECT PURCHASE OF REAL ESTATE

This section discusses the tax implications of the direct purchase of real estate. First is discussed the impact for resident individuals and non-resident individuals. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident Individuals

Transfer taxes
Acquisition of real estate triggers transfer tax which is due by the purchaser. The stipulated price is subject to transfer tax at a rate of 6% - 7.5% collected by a French notary.

VAT
The supply of real estate is not subject to VAT for the purchase of real estate between individuals (only transfer tax). If VAT applies, no transfer tax is due. VAT can only apply if the vendor is subject to VAT. The sale of a building land is subject to VAT if the vendor is a professional subject to VAT (rate 20% at the expense of the buyer). The sale of a new real estate (within 5 years of its creation) by a professional vendor is subject to VAT (20%). It is possible for a person subject to VAT to opt for the application of VAT, if it is not applicable by default.

Non-resident individuals

Same treatment as residents. The nomination of a tax representative in France is only necessary when selling the real estate or the shares, not when buying them.

Resident companies

Transfer taxes
The acquisition and transfer of French real estate is subject to transfer taxes. The market value of the immovable property will be subject to a tax rate of 5.09% in most situations. This rate could be adjusted

by departmental advisors. The transfer tax is payable by the purchaser and is not deductible as business costs, it constitutes depreciable acquisition costs.

Value added tax
The supply and lease of real estate are exempted from VAT unless a building is sold within five years after its built. The applicable VAT rate is 20%. However, when the operation is exempted it stays possible to opt for a VAT taxation under conditions. In this case, the input VAT would be deductible.

Non-resident companies

Non-resident companies are treated in the same manner as resident companies for the income generated from immovables property located and taxable in France. The non-resident company is therefore liable to tax in France with the income generated in France only.

INDIRECT PURCHASE OF REAL ESTATE

This section discusses the tax implications of the indirect (shares) purchase of real estate. First is discussed the impact for resident individuals and non-resident individuals. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident individuals

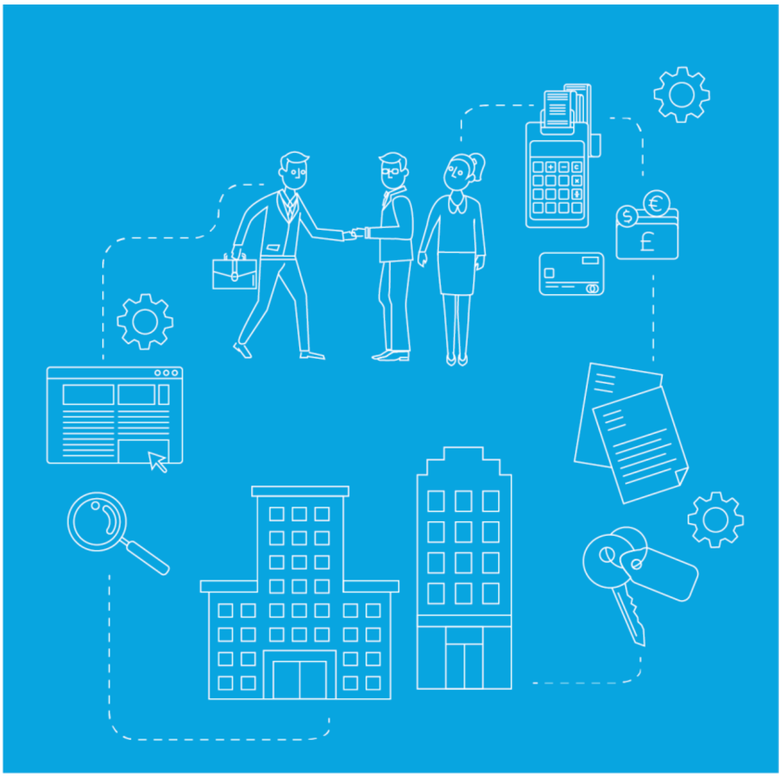
Transfer taxes
Transfer tax is due on the sale of shares. Rate are 0.1% to 5%.

Non-resident individuals
Same treatment as for individuals.

Resident companies

Transfer taxes
The transfer of shares in a non-listed real estate company is subject to transfer taxes at a rate of 5%. A company qualifies as a "real estate company" if its gross assets is composed of 50% or more of immovable property (or property rights) located in France.

Non-resident companies
Non-resident companies are treated in the same manner as resident companies.



HOLDING FRENCH REAL ESTATE

DIRECT HOLDING OF REAL ESTATE

Resident individuals

Personal income tax
Rental income is taxed as ordinary income, subject to annual tax return. Rental income received by individuals is subject to individual income tax. Rental income is determined by the difference between revenues and expenses (*régime réel*). Nonetheless, it is possible to benefit from a fixed reduction of the tax basis (*régime micro*). In that case, expenses are not deductible.

Losses carry forward
For *revenus fonciers* (unfurnished rental income):

- It is possible to impute the losses on the global income up to EUR 10,700;
- The losses exceeding EUR 10,700 in the current year can be carried forward on the same type revenues of the 10 following years.

For *bénéfices industriels et commerciaux* (furnished rental income):

- It is possible to impute the losses on the global income unlimitedly if the rent activity is pursued as a professional activity (certain conditions need to be fulfilled, this requires further analysis);
- If the rent activity is not professional, the deficit is imputable only on same type revenues of the next 6 years;
- It is possible to amortise the price of acquisition of the real estate.

Taxe foncière (tax on ownership of real estate)
Taxe foncière is a communal tax on the ownership of real estate.
Ownership of a real estate on January 1st of the year considered makes one liable to this tax for the entire year. The rates are fixed by municipalities.

Wealth tax
A real estate wealth tax (*impôt sur la fortune immobilière*) is levied on the detention of real estate only by individuals (it was levied on the total wealth including movable property, before 2018). Individuals are subject to this tax when their net real estate wealth exceeds EUR 1.3 million.
Value of real estate exceeding EUR 800,000. Expenses are deductible under conditions. An allowance of 30% is granted on the value of the main residence. Progressive rates from 0.5% to 1.50%.

3% tax on immovable property (FTC, art. 990 D to 990 G)
A tax of 3% is levied on the market value of all immovable property owned by a company, regardless of the company's taxation regime (corporate tax companies pay it themselves and income-tax companies pay it through the associates).

Non-resident individuals

Same rules as for a resident individual. Except that non-residents are taxed at a minimum rate of 30% of income tax on their rental income. And the social contributions are reduced to 7.5% instead of 17.2% for non-residents who pay social security in an EEE member state.

Resident companies

Corporate income tax
Business income such as rental income and capital gains are subject to corporate income tax. All income gains and expenses of companies are taken into account on an accrual basis.

Deductibility of costs, interest and depreciation
Companies can deduct interest costs and depreciation costs from rental income. Amortisation of buildings can be taken into account for periods depending on the type of building (20 to 50 years for commercial buildings, 20 years for industrial buildings, 25 years for offices, etc.). However, land is not depreciable.

Anti-tax-avoidance directive
The anti-tax avoidance Directive (ATAD) is an EU Directive that will be implemented by the European countries. ATAD contains certain interest restrictions that may affect investors in real estate. The Directive has been transposed into French law by the French Financial Law for 2019. It prevents for instance the deduction of more than 75% of the financial expenses if their amount is more than € 3 million or 30% of the EBITDA.

Losses – carry back/forward
Losses may arise if there is an excess on interest and depreciation allowance over the rental income. Such losses may be carried forward for offset against future rental income and capital gains of this company in the limit of € 1,000,000 plus 50% of the benefit's amount of the fiscal year exceeding this limit. The overage of deficits could be carried forward in the same conditions without time-limit. A carry back is also possible. In case of fiscal unity (consolidated group), losses of the company can be offset on profits made at group level.

Non-resident companies

Since French real estate held by a foreign company is considered as constituted a permanent establishment in France, non-resident companies are treated in the same manner as resident companies. However, the non-resident company is limited taxable in France with the income generated in France.

INDIRECT HOLDING OF REAL ESTATE

This section discusses the tax implications of the indirect (shares) holding of real estate. First is discussed the impact for resident individuals and non-resident individuals. Thereafter is discussed the impact for resident companies and non-resident companies.

Resident individuals

Personal income tax

If the company is subject to corporate tax, the shareholder will be taxed on the products of the shares in the category of *revenus de capitaux mobiliers* (dividends) at a flat rate of 30% or at the progressive rate after application of an allowance of 40% of the income. If the company is subject to income tax, the shareholder will be taxed according to the type of revenue they are provided with (unfurnished rental, furnished rental, etc.), submitted to the progressive rates (14% to 45%).

3% tax on immovable property (FTC, art. 990 D to 990 G)

A tax of 3% is levied on the market value of all immovable property owned by a company, regardless of the company's taxation regime (corporate tax companies pay it themselves and income-tax companies pay it through the associates).

Non-resident individuals

A withholding tax is applied on dividends distributed to non-residents at a rate of 12.8%. For shares of companies subject to income tax, no withholding tax applies.

Resident companies

Corporate income tax

Income derived out of shareholding is qualified as business income for companies and taxed at corporate income tax.

Losses

Interest costs from loans for acquiring the share of a real estate company are regarded as part of the cost price and are amortised for 5 years. Depreciation costs can be subject to provision.

Anti-tax-avoidance directive

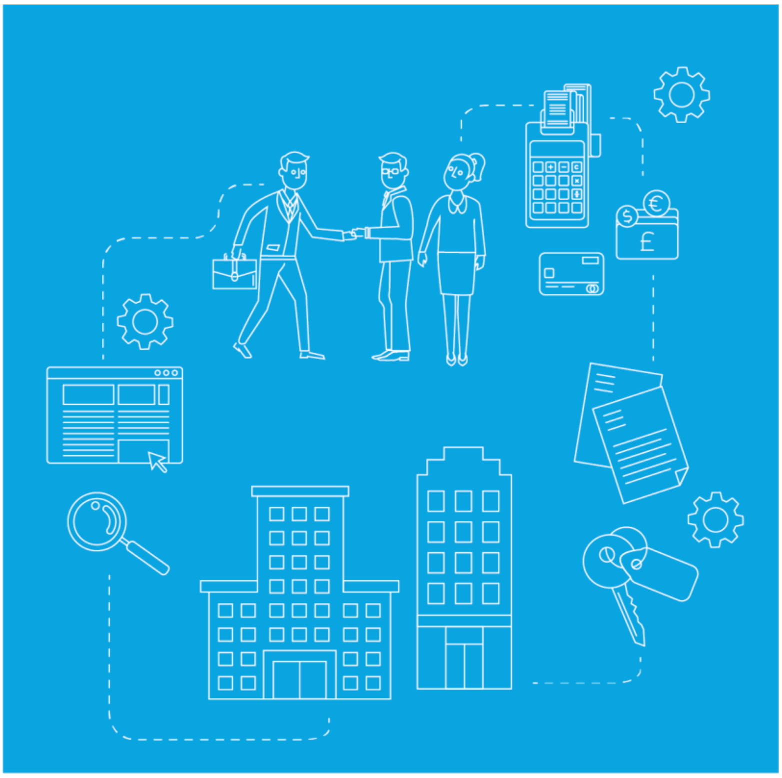
The anti-tax avoidance directive (ATAD) contains certain interest restrictions that may affect investors in real estate. The Directive has been transposed into French law through the French Financial Law for 2019. The Directive has been transposed into French law by the French Financial Law for 2019. It prevents for instance the deduction of more than 75% of the financial expenses if their amount is more than € 3 million or 30% of the EBITDA.

Distribution of income and gains

Dividends paid to another company who owns at least 5% of the payers share capital are exempted from taxation provided the shares are owned for a minimum of 2 years (under the parent-daughter regime). A quota of fees and shares equal to 5% of the net income from the dividend is reintegrated and taxed at corporate income tax. Dividends paid to a foreign company (non-resident) are exempted from withholding tax.

Non-resident companies

Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is limited taxable in France with the income generated in France.



SELLING AND TRANSFERRING FRENCH REAL ESTATE

DIRECT SALE OF REAL ESTATE

Resident individual

Capital gain
Introduction
Capital gains on the sale of real estate are taxed at a fixed rate after application of an allowance, depending on the duration of detention of the estate.

Liability to tax
The sale of real estate property.

Basis of tax
Capital gains may be partially taxed according to how long the estate was owned.

Fixed corrections must be applied to the operation (in absence of justification for actual costs incurred):

- Fixed 7.5% for acquisition expenses must be added to the acquisition price;
- Fixed 15% for works must be deducted from the cession price.

Exonerations
Exemptions / reductions from taxation are available depending on the nature of the real estate investment or holding period.

Rates
Capital gains are taxed at a fixed rate of 19% plus 17.2% (social contribution on patrimony revenues). Additional rate of 2% to 6% applies to capital gain exceeding EUR 50,000.

VAT / transfer tax
No VAT is ever due by the vendor of real estate.

Losses
Losses on the sale of real estate cannot be imputed on capital gains of the same nature. There is a no compensation principle.

Non-resident individual
Non-residents are treated the same way as residents. There is an exception for non-residents who pay social security in a European Economic Area member state: social contributions are reduced from 17.2% to 7.5%.

Non-residents must appoint a tax representative in France if the sale price exceeds EUR 150,000 unless the real estate was owned for 30 years or more (tax treaties can suppress that rule).

Resident company

Capital gains
Capital gains on French real estate realised by companies are subject to French corporate income tax as business income.

A reduced tax rate of 19% applies to capital gains realised by French SIIC (French listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value.

VAT/transfer taxes
The supply and lease of real estate is generally exempted from VAT. An option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%. VAT is always charged if a building is sold within 5 years after it was built.

Transfer taxes apply by the acquisition of the legal or economic ownership of French real estate and is normally payable by the purchase. The market value of the immovable property constituted the basis of the transfer tax. The transfer tax rate amounts to 5.09% in general cases.

Losses
The losses realised on the sale of the real estate may be offset against taxable income. A loss carry-forward is also possible.

Non-resident company
Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is limited taxable in France with the income generated in France.

INDIRECT SALE

Resident individuals

Capital gains
The sale of shares is subject to tax on capital gain. The gain is subject to a flat tax of 30% or to the progressive rate with an allowance (50% to 85%, depending on how long a person owned the titles). If a company is said *à prépondérance immobilière* (consisting in more than 50% of real estate) and subject to income tax, the sale of its shares is treated like the capital gain on direct sale of real estate.

Deferral of tax
If an individual contributes with shares of a company A to the capital of a corporate-tax company B which they control, the tax payment is deferred, but the tax is calculated at the time of the operation.

If an individual contributes with shares of a company A to the capital of a corporate-tax company B which they do not control, the payment and determination of the capital gain are deferred. The operation of contribution to the capital of company B is neutral in terms of tax and the capital gain will be determined by the difference between the cession price of company B's shares and the acquisition price of company A's shares.

Losses
If the sale concerns shares of a company which is not "real estate company" (*à prépondérance immobilière*, i.e. consisting of more than 50% of real estate) or *à prépondérance immobilière* subject to corporate tax, the regular regime of capital gains on shares is applicable and the losses can be imputed on same type revenues (capital gains on shares). If the sale concerns shares of a company which is *à prépondérance immobilière* (consisting of more than 50% of real estate) and subject to income tax, the regime of capital gains on the sale of real estate applies meaning it is impossible to impute the losses even on same type revenues.

Non-resident individual
Non-residents are treated as residents, exonerations are very rare.

Resident company

Capital gains
Capital gains realised on the sale of the shares of a French company are subject to French corporate income tax as business income.

A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value

VAT/transfer taxes
The supply and lease of real estate is generally exempted from VAT. An option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%. VAT is always charged if a building is sold within 5 years of its creation.

Transfer taxes apply by the acquisition of the legal or economic ownership of French real estate and is normally payable by the purchase. The market value of the immovable property constituted the basis of the transfer tax.

Transfer taxes apply at a rate of 5%.

Losses
The losses realised on the sale may be offset against taxable income.

Non-resident company
Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is limited taxable in France to the income generated in France.

DIRECT TRANSFER INTRA CONCERN (FRENCH REAL ESTATE TO FRENCH COMPANY)

Resident Company

Capital gains
Capital gains on French real estate realised by companies are subject to French corporate income tax as business income.

A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value

VAT/transfer taxes
The supply of real estate is generally exempted from VAT. However, VAT is charged if a new building is sold within 5 years after its creation. Nevertheless, an option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%.

Transfer taxes apply at a rate of 5%.

Losses
The losses realised on the sale of the real estate may be offset against taxable income. A loss carry-forward is also possible.

Fiscal unity
Under French law, it is possible to form a fiscal unity if the holding company owns 95% of the shares in its subsidiaries. A fiscal unity can only be formed in case both of the entities are French residents. The intra-group transactions are neutralised for tax purposes. Thus, the transfer of real estate within a fiscal group are not visible for tax purposes and not subject to tax. However, it exists certain anti-abuse rules in case the fiscal unit will be broken after transferring the real estate.

Non-resident company

Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is limited taxable in France with the income generated in France. A foreign company cannot be part of a fiscal group; however, it is possible to form a fiscal group with a foreign company's permanent establishment. Various conditions apply.

INDIRECT TRANSFER INTRA CONCERN (FRENCH REAL ESTATE TO FRENCH COMPANY)

Resident company

Capital gains
Capital gains realised on the sale of the shares of a French company are subject to French corporate income tax as business income.

A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value

VAT/transfer taxes
The supply of immovable property is generally exempted from VAT. However, VAT is charged if a new building is sold within 5 years of its creation. Nevertheless, an option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%. Transfer taxes are due by the purchaser and amount to 5,09% in general cases and to 5% for transfer of SIIC's shares.

Fiscal group
Under French law, it is possible to form a fiscal unity if the holding company owns 95% of the shares in its subsidiaries. A fiscal unity can only be formed in case both of the entities are French residents. The intra-group transactions are neutralised for tax purposes. Thus, the transfer of real estate within a fiscal group are not visible for tax purposes and not subject to taxation. However, its certain anti-abuse rules exist in case the fiscal unit will be broken after transferring the real estate.

Non-resident company

Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is subject to limited taxation in France in respect of the income generated in France.

A foreign company cannot be part of a fiscal group. However, it is possible to form a fiscal group with a foreign company's permanent establishment (various conditions apply).

DIRECT TRANSFER INTRA CONCERN (FRENCH REAL ESTATE TO FOREIGN COMPANY)

Resident company

Capital gains
Capital gains realised on real estate are subject to French corporate income tax as business income. A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value

VAT/transfer taxes
The supply of real estate is generally exempted from VAT. However, VAT is charged if a new building is sold within 5 years of its creation. Nevertheless, an option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%.

Transfer taxes are due by the purchaser and amount to 5.09% in general cases and to 5% for transfer of SIIC's shares.

Losses
The losses can be offset against other taxable French income.

Fiscal unity
A foreign company cannot be part of a French fiscal group.

Non-resident company

Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is subject to limited taxation in France in respect of income generated in France.

INDIRECT TRANSFER INTRA CONCERN (FRENCH REAL ESTATE TO FOREIGN COMPANY)

Resident company

Capital gains
Capital gains realised on the sale of the shares of a French company are subject to French corporate income tax as business income.

A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value.

VAT/transfer taxes
The supply of immovable property is generally exempted from VAT. However, VAT is charged if a new building is sold within 5 years of its creation. Nevertheless, an option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%.

Transfer taxes are due by the purchaser and amount to 5.09% in general cases and to 5% for transfer of SIIC's shares.

Losses
The losses can be offset against other taxable French income forward and backward.

Fiscal unity
A foreign company cannot be part of a French fiscal group.

Non-resident company
Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is subject to limited taxation in France in respect of the income generated in France.

A foreign company cannot form a fiscal group for French tax purposes but can indirectly member of the group relief (through French permanent establishment).

TRANSFER OF FRENCH REAL ESTATE TO AN EU-COMPANY

Individuals
The transfer of French real estate to an EU-company is the same treatment as the transfer of French real estate to a French company. This transfer is assimilated for tax purpose to a sale, therefore it triggers all the tax due by a such operation.

Resident individuals

VAT / transfer tax
No VAT is ever due by the vendor of real estate.

Losses
Losses on the sale of real estate cannot be imputed on capital gains of the same nature. There is a no compensation principle.

Non-resident individuals

The same treatment applies to non-residents.

Companies

Resident company

Capital gains
Capital gains realised on the sale of the shares of a French company are subject to French corporate income tax as business income. A reduced tax rate of 19% applies to capital gains realised by French SIIC (listed real estate investment companies) and to capital gains realised on the sale of professional premises converted into dwellings or building land on which dwellings are built.

The corporate income tax on capital gains is based on the difference between the net sales proceeds and the fiscal book value

VAT/transfer taxes
The supply of immovable property is generally exempted from VAT. However, VAT is charged if a new building is sold within 5 years of its creation. Nevertheless, an option for VAT is possible for sellers who are liable for VAT purpose (French "*assujettis*"). Thus, the input VAT should be deductible. The applicable VAT rate is 20%.

Transfer taxes are due by the purchaser and amount to 5%. The transfer tax is not deductible from the profits as business cost but is part of the acquisition costs for tax purposes.

Losses
The losses can be offset against other taxable French income.

Fiscal unity
A foreign company cannot be part of a French fiscal group.

Non-resident company

Non-resident companies are treated in the same manner as resident companies. However, the non-resident company is subject to limited taxation in France in respect of the income generated in France.

This report has been produced in conjunction with Nyenrode Business Universiteit