

French non-resident individuals and French real estate wealth-tax

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The purpose of this article is to provide an overview of the real estate wealth tax (“IFI”) mechanism applicable to non-French residents. However, it should be noted that each case is specific and must be analysed in details given the technical characteristics of this taxation.

Under the French Tax Code (CGI), an annual real estate wealth tax applies when fair market value of a taxpayer's real estate assets, valued at the level of his tax household, exceed the limit of €1,300,000 on 1 January of the year.

However, the net taxable assets are determined differently depending on whether or not the individuals are regarded as French tax resident.

The current tax rates are set out below:

| Net value of real estate asset | Rate of tax |
|--------------------------------|-------------|
| Up to 800,000 € | 0% |
| 800,001 € to 1,300,000 € | 0.5% |
| 1,300,001 € to 2,570,000 € | 0.7% |
| 2,570,001 € to 5,000,000 € | 1% |
| 5,000,001 € to 10,000,000 € | 1.25% |
| Above 10,000,000 € | 1.5% |

1. Territoriality

When the taxpayer is not considered as a French tax resident, he is subject to real estate wealth tax only on his real estate assets located in France (subject to the terms of the applicable tax treaty, if any).

For the sake of good order, to determine whether a taxpayer's tax domicile is located in France, reference must be made to Article 4 B of the CGI, which considers as having their tax domicile in France:

- individuals having their home in France
- those with their main residence in France
- those who carry out a professional activity in France, whether salaried or not, unless they can prove that this activity is carried out on a secondary basis
- those with their centre of economic interests in France.

For a taxpayer to be considered as a French tax resident, only one of these four conditions needs to be met.

When the taxpayer is considered as a French tax resident:

- He is, in principle, subject to an unlimited tax liability, i.e. all real estate assets belonging to them, whether located in France or outside France, are in the scope of application of the IFI.

- Under certain conditions, taxpayers newly settled in France benefit from a temporary French wealth tax exemption on their real estate assets and rights located abroad. Indeed, Individuals who have not been resident for tax purposes in France for the five calendar years preceding the year in which they become French tax resident are only liable for the real estate wealth tax based on their real estate assets and rights **located in France**. Then, this regime applies for each year during which the taxpayer maintains his or her tax residence in France, i.e. until December 31 of the fifth year following the year during which the tax residence was established in France. This measure applies regardless of the reason for transferring the tax residence (professional mobility, retirement, etc.).

2. Assets

Non-resident individuals are only subject to IFI on the basis of their real estate assets and rights located in France (metropolitan France, Guadeloupe, French Guiana, Martinique, Mayotte and Reunion), whether the real estate is held directly or indirectly, by a French or foreign company, meaning:

(i) real estate and real estate rights located in France; and

(ii) the units or shares of companies or organizations (established in or outside France notably like trusts), in the amount of the fraction of their value representing real estate and real estate rights located in France held directly or indirectly by the company or organization.

As regards real estate located in France held by a company, the French tax law provides for application of IFI that all companies, listed or unlisted, regardless of their tax regime or place of their registered office are concerned.

Real estate assets used by the taxpayer to carry out his professional activity, either as a sole trader, through a partnership, or through a company subject to corporate income tax will, subject to certain conditions, be exempt from the IFI.

Furthermore, shares of an operating entity holding real estate assets, whether directly or indirectly, is not subject to IFI when these real estate assets are used for the purpose of the operating activity of either this entity, the one holding these assets or a group operating entity controlled by this first operating entity. This exemption also applies when the operating company holds real estate assets used for the purpose of its activities indirectly through a non-operating company, notably a French "SCI" (i.e. société civile immobilière).

In addition, the shares of companies carrying on an industrial, commercial, craft, agricultural or liberal activity, of which the taxpayer holds directly or indirectly, alone or jointly with the other members of his tax household, less than 10% of the capital, are also exempt from IFI.

3. Deductible liabilities

The rules governing the deductibility of debts are quite complex.

The French tax code establishes a list of debts that can be deducted from the taxable basis of the taxpayer, which includes: debts relating to expenses for the acquisition of real estate or rights to real estate; expenses for repairs and maintenance actually paid by the owner; expenses for improvements, construction, reconstruction or enlargement (contrary to what is provided for in matters of property income); certain taxes, in particular property tax ("taxe foncière"), which is the responsibility of the owner, excluding taxes on the income from the said property.

Special attention must be made to debts and loans. Each situation should be carefully reviewed to determine whether and to what extent a debt or loan is deductible and can be taken into account. Only debts effectively incurred by a tax payer as at January 1st, and that relate to a taxable asset are deductible.

For the valuation of company shares, the application of anti-abuse mechanism may deny the deductibility of certain debts or loans, contracted directly or indirectly by the company.

Finally, it should be noted that there is a limit on loan debts. Indeed, when the gross assets subject to the IFI exceed a threshold (5 million euros on 1 January 2021), and the total debts allowed as a deduction exceed 60% of the gross assets subject to the IFI, the amount of debts exceeding this percentage is only deductible up to 50%.

For example, for a property worth €10,000,000 and a loan of €8,000,000, the deductible amount of the loan is determined as follows

- Total amount of the loan: €8,000,000
- 60% of the gross assets admitted in full: €6,000,000
- Only half of the surplus (€2,000,000) is allowed (€1,000,000)

The total deductible amount is therefore €7,000,000.

4. Tax return process

The real estate assets are declared at the same time as any income taxed in France, on a supplementary declaration n°2042-IFI, in principle at the end of May of each year.

If the non-resident taxpayer does not file any income tax return, but is subject to IFI, an IFI return and its annexes must be filed with a specific return n° 2042-IFI-COV without income.

Although IFI must in principle be declared and paid to the Service des Impôts des Particuliers non-résidents (SIPNR), declarations are made online. The forms can be found on the website impots.gouv.fr, under the heading Forms.

The modalities of payment of IFI are aligned with the payment of the French income tax, upon receipt of a tax bill. Late payment automatically triggers a late payment penalty of 10% plus 0.2% interest.

The period for the French tax authorities to question valuations or omissions for real estate wealth tax in France is as follows:

- Three years if the asset description on the real estate wealth tax form was sufficiently precise, requiring no further research;
- Six years if the description was insufficient or omitted;
- Ten years in all other circumstances.

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