

French Tax News - Measures Concerning Non French Tax Residents

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I. Capital Gains

The French Parliamentary Assembly adopted on 7th September 2011 the Draft Finance Bill for 2011 regarding the Reform of French Capital Gains Tax in respect of secondary residences.

Under the current law, the sale of French secondary residences real estate is totally exempt from Capital Gains Tax after 15 years of ownership. Under the new law the gain will be totally exempt of tax after 30 years of ownership. The new Capital Gains Tax will be applied to sales completed as of 1st February 2012.

A summary of the new allowances is as follows:

- No allowance for the first 5 years of ownership.
- Between 6 and 17 years of ownership: 2% allowance per year.
- Between 18 and 24 years of ownership: 4% allowance per year.
- Between 25 and 30 years of ownership: 8% allowance per year.

Until 1st January 2011, the rate of Capital Gains Tax has been fixed at 19 % + social charges at 13.5%, for a French tax resident.

Non French tax residents are not subject to the social charges, but they are subject to French Capital Gains Tax at different rates depending on where they are resident:

- 19 % if they are resident in an EU Country or Iceland, Norway and Liechtenstein;
- 33.33 % if they are resident in a country other than those above mentioned;
- 50% if they are resident in a country considered by France as an “uncooperative State”

II. Shareholders' loans held by non French tax residents in French or foreign companies:

The Finance Bill also threatens higher taxes for non French tax resident owners of properties in France who have previously avoided paying wealth tax by buying the property through French or foreign companies (such as an SCI) - a company structure to which the shareholders' advanced loans, in order to reduce its taxable value.

As from 1 January 2012, shareholders' loans held by non French tax resident shareholders in French or foreign companies owning French real estate will no longer be taken into account to reduce the value when assessing the value of the shares in the company for Wealth Tax (“ISF”) purposes. Shareholders' loans held by non French tax residents will no longer be considered qualifying debts of the company for Wealth Tax purposes.

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Currently, shareholder's loans held by a non French tax resident are deductible when calculating the value of the property company's shares for French Inheritance Tax purposes.

A refinancing or restructuring of the debts can be envisaged before the end of 2011, but this would need to be balanced with the future Wealth Tax liability incurred.

III. Wealth Tax ('ISF')

In 2011, the net wealth tax threshold has been raised from € 800'000 to € 1'300'000. French-sited assets of a net value exceeding € 1'300'000 will be taxed at progressive tax rates. Non French tax residents are subject to French Wealth Tax, principally on real estate held in France whose net value is over EUR 1.3 million.

Taxpayers (French or non French tax residents) who have assets whose net value is below EUR 1.3 million will not be subject to wealth tax. The deadline for submitting the 2011 wealth tax returns has been extended to 30 September 2011.

As of 1 January 2012, the wealth tax rates will be reduced as follows:

- French sited assets of a net value of between EUR 1.3 million and EUR 3 million will be taxed at a flat rate of 0.25%, and
- French sited assets of a net value exceeding or equal to EUR 3 million will be taxed at a flat rate of 0.50%.

In both cases, tax will be payable from the first euro. For wealth between EUR 1.3 million and EUR 3 million, taxpayers will no longer file separate return but will use their income tax returns.

IV. Registration of the sale of shares of real estate companies abroad

As of 1st November 2011 the sale of shares of companies holding real estate in France must be formally notarized there even if the sale takes place abroad. This notarization will trigger 5 % real estate transfer tax ("droit d'enregistrement").

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