

## CAPITAL GAIN ON PROPERTY MADE BY NON-RESIDENTS

Any capital gain made by a non-resident for tax purposes on property is subject to tax under section 244 bis of the CGI.

### 1/ Computing the capital gain

The gross capital gain is equal to the difference between the sale price and the purchase price. The purchase price is the price actually paid by the seller, as stipulated in the deed. It includes expenses specifically listed:

- Incidental costs of a gift (tax, stamp, etc);
- Incidental costs of acquisition, with the choice of actual amounts or 7.5% of the purchase price;
- Enhancement expenditure: capital costs of additions and improvements to the asset, such as extensions, planning permission and architect fees for extensions. If the property has been retained at least 5 years before the sale, it's possible to allow 15% of the purchase price instead of the actual incidental costs.

Up to 01/02/2012, the net capital gain is reduced by an allowance of 10% for each full year of ownership after the fifth year. So the property is exempt of capital gain tax after 15 years of ownership.

From 01/02/2012, the allowance will be 2% from the 6<sup>th</sup> year to the 17<sup>th</sup> year, 4% from the 18<sup>th</sup> year to the 24<sup>th</sup> year, and 8% from the 25<sup>th</sup> year to the 30<sup>th</sup> year. So the property will be exempt of capital gain tax after 30 years of ownership.

Up to 01/02/2012, a fixed allowance of €1,000 is made on the net capital gain to arrive at the taxable gain. It will be withdraw then.

Losses cannot be set against future or present gains. There is no annual exempt amount.

### 2/ Exempt disposals

- Disposal made by pensioners or disable persons
- Disposal of property for less than €15,000
- Disposal of a property held for more than 15 years (30 years from 01/02/2012)
- Disposal of the main residence

The main residence relief does not apply to non-residents, who by definition do not have their main residence in France. However, non-resident can enjoy a special exemption for their residence located in France (Article 150 II U 2 of the General Tax Code) if the following conditions are met:

- They have the nationality of a Member State of the EEA or any other state if a tax treaty permits;
- They can justify of their tax residence in France for at least two consecutive years prior to the sale;
- The property transferred must be their home in France: it must have been freely available to them since the 1st of January of the year preceding the sale;
- They can benefit of this exemption within the limits of one residence per taxpayer.

### **3/ Computing the tax**

The capital gains made by non-resident are not subject to additional social security contributions of 12.30% (CSG, CRDS, 2% social levy, additional contribution of 0.3%)

Individuals are taxed separately from their taxable income at the rate of:

- 19% if the non-resident is resident for tax purposes in a Member State of the European Economic Area (Member States of the EU + Liechtenstein, Iceland and Norway);
- 33.33% if the non-resident is resident for tax purposes in another state that is not a non-cooperative state or territory;  
Monaco, Andorra, French Polynesia, New Caledonia, Saint Pierre and Miquelon, Mayotte are not part of the European Union. The tax rate is in these territories of 33.33%.
- 50% if the non-resident is resident or established in a non-cooperative state or territory;  
List of Non-Cooperative States and Territories in 2010: Anguilla, Belize, Brunei, Costa Rica, Dominica, Grenada, Guatemala, Cook Islands, Marshall Islands, Liberia, Montserrat, Nauru, Niue, Panama, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines.

### **4/ Reporting requirements**

The capital gain must not be report on the 2042 self assessment tax return.

The taxable gain is calculated and reported by the notary on Form [2090](#). This form is mandatory whenever the seller is tax non-resident, whether there is a gain or not (except in cases of property held for over 15 years).

### **5/ Tax representative**

You must nominate a tax representative except if:

- The disposal consideration does not exceed €150,000
- The property has been held for more than 15 years (exempt disposal).

The tax representative can be:

- A company or organization that is accredited permanently by the tax authorities.
- A bank in France;
- The purchaser of the property if it has its fiscal domicile in France;
- Any other person having his fiscal domicile in France. In this case the person must be agreed by the tax authorities before the publication of the deed.

Upon execution of the deed, the notary has 2 months to file the deed and 2090 return, and pay the tax.