

French Capital Gains Tax on real estate changes from 1 January 2015

The recent *Loi de finances rectificative (LFR) 2014*¹ has introduced several amendments to the French tax rules applicable to non-resident property owners.

Tax representative abolished for EU residents

Non-resident individuals or corporate entities owning properties in France and who are liable to pay the *prélèvement* of Article 244 bis CGI (Capital Gains Tax) are required by French law to appoint a *Représentant Fiscal Accrédité* (Accredited Tax Representative) on completion of the sale.

For its services the Accredited Tax Representative usually withholds 0.7 to 1 percent of the proceeds of the sale.

The Accredited Tax Representative (together with the *Notaire*) is responsible for calculation and payment of the *prélèvement* as well as for any penalties or interest that may be due in case of underpayment of the tax over a period of 3 years (after which the statute of limitation applies).

This requirement (introduced in the 1950's in terms of VAT) has been ruled as a restriction on free movement of capital within the European Union by the European Court of Justice in [C297/09 Commission v / Portugal May 5, 2011].²

As a result, the requirement to appoint an Accredited Tax Representative has been abolished in French law but only for residents of the European Economic Area (EEA)³ excluding Liechtenstein.

It remains mandatory for residents of other states.

Single rate for individual sellers

Changes have also been introduced regarding the rate of the *prélèvement*. This is now fixed at a rate of 19 percent for EEA and non-EEA residents alike (the 33.1/3% rate for non-EEA residents is abolished).

However, an uncertainty remains for the rate applicable to residents of a "non-cooperative state".⁴ The proposed rate of 75 percent (90.5 percent with social security contributions) has been ruled as excessive by the *Conseil constitutionnel*⁵

The Government has announced that the issue will be addressed in a future *Loi de finances*.

¹ *Loi n° 2014-1655 du 29 décembre 2014 de finances rectificative pour 2014*

² Available on: <http://curia.europa.eu/juris/>

³ EU + Iceland, Norway and Liechtenstein

⁴ Botswana, BVI, Brunei, Guatemala, Marshall Island, Montserrat, Nauru, Niue

⁵ *Décision 214-708 DC du 29-12-2014*

Conclusion

Overall a win for non-resident sellers. However, the notarial profession which is now entirely responsible for calculation and payment of the tax may not remain mute on the subject. The revision of their tariffs is currently pending⁶ and may well result in an increase of conveyancing fees and the seller's gain could be the buyer's loss.

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⁶ *Projet de loi pour la croissance et l'activité* - available on <http://www.gouvernement.fr/>