C'est la vie!

Patrick Delas explains that UK residents looking to sell their French second home are seeing their capital gains tax exposure significantly increased by the end of the Brexit transition period on 31 December 2020.

As confirmed by the French Directorate General of Public Finances (*Direction Générale des Finances Publiques*, DGFIP) tinyurl.com/y68fp8o2, UK residents are now:

- subject to French social security contributions at the full rate of 17.2% (previously 7.5%); and
- required to appoint a French tax representative to guarantee their payment of the tax.

This was reported briefly in *Taxation* (21 January 2021, page 4) and it presents an opportunity for a recap on the French capital gains tax system generally.

French system of taxing capital gains

The capital gains of individuals or tax transparent entities defined by article 8 of the *Code Général des Impôts* (CGI) – for example *Sociétés Civiles Immobilières* or SCIs – are subject to French income tax on the sale of immoveable property or an interest in such entities (SCI shares, for example) (see CGI Art 150U to 150UD).

There are exemptions for the individual's main residence or where the sale price is less than €15,000 and for the residences of European Economic Area (EEA) nationals who have been residents of France for two consecutive years before the sale and are still in occupation of the property on 1 January of the year before the sale (aimed at French expats).

The taxation is on the capital gain calculated by reference to the sale price and the purchase price.

Key points

- In France, capital gains are subject to income tax on the sale of immoveable property or an interest in it.
- Residents from outside of the European Economic Area are required to appoint a French tax representative when selling their French property.
- From 31 January UK residents will need to appoint a French tax representative – they typically charge 0.7% to 1% of the sale price.
- Taper relief on capital gains tax may be available.
- EEA residents are exempt from social security contributions but from 1 January, UK residents will be liable at the full rate of 17.2%.

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The sale costs are deducted from the sale price and the purchase costs and capital improvements are added to the purchase price. If the actual purchase costs cannot be established with certainty, a fixed 7.5% of the original purchase price may be added.

As regards the costs of capital improvements (additional building works), these may be added to the purchase price with supporting evidence of payment to a professional contractor (paid invoices). If the actual costs of improvements cannot be established with certainty, a fixed 15% of the original purchase price may be added. This allowance is, however, only available from the fifth year of ownership (see CGI Art 150VB).

> "The debate is no longer relevant to UK residents post Brexit who are now subject to CSG and CRDS at the full rate of 17.2%."

The notary and representative

The conveyancing *notaire* (notary) is responsible for calculating the capital gain and paying the tax that will be withheld from the proceeds of the sale. Therefore, French capital gains tax must be paid upfront. The French Revenue then has until 31 December of the third year following completion to enquire about the declaration after which a statute of limitation applies.

To guarantee a claim over the period, residents outside the EEA – such as UK residents since the end of the Brexit transition period from 31 January – are required to appoint a *représentant fiscal accrédité* (tax representative) (tinyurl.com/impotsgouvfrfr). A tax representative will typically charge 0.7% to 1% of the sale price. Sales under €150,000 (or at a loss) are exempt.

Taper, rates and additional tax

As stipulated in the supplementary budget of 2011 (*Loi de Finances Rectificative)* – LFR 2011, since 1 February 2012, taper relief is available under the following progressive schedule:

Years of ownership	Relief
From 0 to 5	0%
6	6%
7	12%
8	18%
9	24%
10	30%
11	36%
12	42%
13	48%
14	54%
15	60%
16	66%
17	72%
18	78%
19	84%
20	90%
21	96%
22	100%

The resulting net gain is subject to a *prélèvement* (levy) of 19%. Further, on 29 December 2012, the LFR 2012 introduced an additional tax for capital gains above €50,000. The following scale applies aimed at reducing the 'band effect of the tax':

Capital gain (€)	Tax
50,001 to 60,000	PV x 7% – 3 000
60,001 to 100,000	PV x 2%
100,001 to 110,000	PV x 13% – 11 000
110,001 to 150,000	PV x 3%
150,001 to 160,000	PV x 19% – 24 000
160,001 to 200,000	PV x 4%
200,001 to 210,000	PV x 25% – 42 000
210,001 to 250,000	PV x 5%
250,001 to 260,000	PV x 31% – 65 000
Above 260,000	PV x 6%

PV = taxable gain

Social security contributions

As well as the above, French residents have been subject, since the 1990s, to a series of social security contributions such as *contribution sociale généralisée* (CSG), *contribution au remboursement de la dette sociale* (CRDS) and *prélèvement social*) representing an extra payment due of 17.2% since 1 January 2018 making capital gains subject to a 36.2% tax in total.

Mr White's house

Mr White bought a house in France in February 2011 for €100,000. He has used the property for holidays several times each year since then and has also allowed friends and relations to spend vacations there. Following Brexit and the restrictions to the time that non-nationals can spend in the EU he decided to sell the house and this was completed in February 2021. The house sold for €200,000. The French capital gains and social security charges are calculated as follows:

	€	€
Sale proceeds		200,000
Less: Purchase cost	100,000	
Acquisition costs allowance (7.5%)	7,500	
Improvements allowance (15%)	15,000	
Total costs		122,500
Capital gain		77,500
	Capital gains tax	*Social security*
Capital gain as above	77,500	77,500
Taper relief for tax and social charges for ten years ownership at 30% and 8.25%	23,250	6,394
Excess gain subject to tax	54,250	71,106
Tax and social charges chargeable at 19% and 17.2 %	10,308	12,230
Additional tax on gains of more than €50,000 being €54,250 x 7% = 3,798 – 3,000 =	798	
Total tax and social security charges (€10,308 + €12,230 + €798)	€23,336	

If the UK had remained in the EEA, the total tax payable would have been €16,438 being €10,308 + €798 as above + €5,332 (the 7.5% *prélèvement de solidarité* on €12,230).

Relief however is available by tapering the gain as follows:

Years of ownership	Relief
From 0 to 5	0%
6	1.65%
7	3.30%
8	4.95%
9	6.60%
10	8.25%
11	9.90%
12	11.55%
13	13.20%
14	14.85%
15	16.50%
16	18.15%
17	19.80%
18	21.45%
19	23.10%
20	24.75%
21	26.40%
22	28.00%
23	37.00%
24	46.00%
25	55.00%
26	64.00%
27	73.00%
28	82.00%
29	91.00%
30	100.00%

Both the CSG and CRDS on income and gains were introduced in an attempt to reduce the deficit of the French National Insurance scheme covering illness, maternity and pension benefits.

Their legal nature ('are they taxes or social charges?') has never ceased to be debated. The *Conseil constitutionnel* and the two supreme jurisdictions of France, the *Conseil d'Etat* (administrative) and the *Cour de cassation* (civil) seem to have different views on the matter.

Until 31 July 2012 non-residents were simply exempt from CSG and CRDS as they were considered to be covered by their own country's National Insurance schemes. The government resulting from the general elections of June 2012 (François Hollande) regarded this exemption as 'unjustified' and the LFR 2012 amended the legislation so that, from 1 August 2012, both the charges applied to all residents and non-residents.

Planning point

Tax practitioners with UK-resident clients who own property in France should advise their clients of the new requirement to appoint a French tax representative, from 1 January, when selling.

Court of Justice decision

The matter went before the Court of Justice of the European Union which, on 26 February 2015, in the case of *Ministre de l'Économie et des Finances v Gérard de Ruyter* (Case C-623/13 at tinyurl.com/y6px25n7) confirmed that CSG and CRDS are social charges, directly connected to the French National Insurance and that charging CSG and CRDS to other EU residents is in breach of Regulation (EU) 1408/71.

The sums retained were generally refunded with interest.

The French government reacted by reallocating the proceeds of CSG and CRDS to 'non-contributory benefits' (in other words, those granted to French taxpayers and non-taxpayers alike) from 1 January 2016. The idea was to technically 'disconnect' the contribution from its benefit.

The administrative jurisdiction was clearly not convinced and confirmed the principles set out by C-623/13 *de Ruyter* on 31 May 2018 (*CAA Nancy* 31-5-2018 17NCO2124) ruling the provision unlawful.

The French government appears to have finally surrendered in its National Insurance Budget 2019 (*Loi n° 2018-1203 du 22 décembre 2018 de financement de la sécurité sociale pour 2019*) which confirmed that CSG and CRDS should no longer be charged to EU residents. Once again, the sums unlawfully retained since 1 January 2018 should be refunded.

These social contributions do not stop there, however, as the so-called *prélèvement de solidarité* – funding the French universal credit – remains due and has increased from 2% to 7.5% from 1 January 2019.

The courts may well be busy again but in any event the debate is no longer relevant to UK residents post Brexit as they are now subject to CSG and CRDS at the full rate of 17.2%.

Double tax treaty (DTT)

Under the double tax treaty, France retains the right to apply tax to the sale of property situated in France under its own domestic rules. If taxation also applies under UK domestic rules (in other words if the vendor is UK domiciled and resident), double taxation is avoided on the basis of a credit available in the UK.

However, only taxes referred to in the double taxation treaty, Art 2 para 1(b)(i) to (iv) are regarded as 'French taxes' and this excludes CSG and CRDS. The position is confirmed by HMRC on its website, resulting in CSG and CRDS definitely 'lost' to the French Revenue (tinyurl.com/yxkym4qr).

Author details

Patrick Delas is a senior associate in the French law and property team at Russell-Cooke LLP. He can be contacted by email: Patrick.delas@russell-cooke.co.uk.

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