

# DOCUMENTATION 2011

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## CAPITAL GAINS IN FRANCE

NON-RESIDENT - FORM 2048 - CALCULATION - THE 3% TAX - EXEMPTIONS  
DEDUCTIBLE WORKS - TAX FOR INDIVIDUALS - TAX FOR FRENCH PARTNERSHIP  
FOREIGN LEGAL ENTITIES - FURNITURE - TAX ON PIECES OF LAND - TAXE RATE



ACCREDITECO

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YOUR NEW FISCAL REPRESENTATIVE

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This documentation concerns the main rules  
of the tax representation  
and the capital gains  
for **non-residents**.

All the laws and fiscal forms  
on our website  
**[www.accrediteco.fr](http://www.accrediteco.fr)**

Do not hesitate to contact us  
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## What is Accréditéco?

We are a private company dealing with tax representation. We have an authorization delivered by the French Tax Administration.

### → Our mission:

- to draw up and sign the capital gains declaration,
- to guarantee any tax adjustment for the period during which the French Tax Administration may check the tax,
- if the seller is a legal entity based outside of the E.U., we guarantee the payment of the annual tax of 3% (art. 990 F of the French Tax Code).

Our fees are calculated on the sale price and adjusted according to each different file.

They are also deductible into the tax calculation.

### → When should the seller appoint us?

#### • Private individuals:

- If the share of the sale price is higher than € 150,000,
- And if the property was bought less than 15 years ago (even if there is no capital gains tax to pay).

The threshold of € 150,000 is valued without taking into account the agency fees, using the share of each joint owner, and after deduction of the furniture (if justified).

- **If the sellers are married**, the threshold of € 150,000 is valued regarding the whole sale price.
- **Legal entities:** for each sale.
- **French partnerships (« SCI »...):**
  - The threshold of € 150,000 is valued by adding the shares of the « non-resident » partners,
  - Or if a foreign company is partner.

## Are you non-resident?

### → Foreign legal entity:

when the head office is located out of France.

### → Private individual:

if the seller doesn't fill out the « 2042 » tax return in France and is not liable to tax in France on his entire income.

If he gets only rental revenues, he can not be considered as french tax resident.

It is his situation **on the date of the sale** which is taken into consideration.

## When do you need a form 2048 IMM?

### → In every case, **except:**

#### Non-résidents

- if the property was bought more than 15 years ago (only for private individuals)
- sale price  $\leq$  € 15,000 (except sale of shares and legal entities)

#### Résidents

- if the property was bought more than 15 years ago
- no capital gains tax to pay
- sale price  $\leq$  € 15,000 (except sale of shares)

## Capital gains tax calculation for individuals

### → Capital gains calculation

- Difference between sale and purchase price,
- Tax cut of 10% per year over the fifth one,
- Tax allowance of € 1,000 for each joint partner (married or not),
- 19% tax rate for European residents, 50% for ETNC residents (no cooperative countries and territories) and 1/3 for the others.

### → Sale price

Any compensation paid by the purchaser instead of the seller are added to the price.

Following costs (if paid by the seller) are deductible : VAT, agent fees, diagnosis (for asbet...), compensation for eviction of a tenant, costs to obtain the release of mortgage, cost of the obtention of a planning permission.

### → Purchase price

It is the price stated in the purchase act, or the value stated in the act of gift or in the French deed of inheritance.

#### • Acquisition expenses can be added to the price:

- **Paid acquisition** : either for real costs (notary's fees, agency's fees, legal fees, VAT...), or for 7,5% of the purchase price,

If the purchase was stated «contrat en mains» (that is to say that all the costs and fees were paid by the seller), nothing can be deducted.

- **Free acquisition (death, gift)**: only the real costs (notary's fees, taxes...); the 7,5 % rate is excluded.

#### • The cost of the works done on the property are added to the price:

- Either for their real costs with conditions (see § Works),

- Or for 15% of the purchase price, if the property is sold 5 years after the purchase.

### → Exemption for non-resident people

(French Tax Code, art. 150 U-II 2°)

- To have the citizenship of a member of the EU, or Finland and Norway,
- To have already paid income tax in France, for at least 2 whole consecutive years,
- To have the free disposal of the property since the 1<sup>st</sup> January of the year preceding the year of the sale,
- the exemption can only apply once after 1<sup>st</sup> January 2006.

### → Exemption for sales ≤ € 15,000

If you are selling real estate for a price lower than or equal to € 15,000, you will be exempted of capital gain tax.

That threshold applies for each sale you make, not annually.

- if you are not the sole owner of the property (married or not), you have to consider the rights of each partner, not the whole price.
- if you are selling only the usufruct or the bare property, you have to consider the rights of each partner (for the whole property of the rights not the only usufruct or not the only bare property), not the whole price.
- if you are selling several properties to a same person, you have to consider the whole price.

### → Others exemptions:

Don't hesitate to contact us (expropriation, beneficiaries of an old age or disability pension).

## Capital gains tax calculation for foreign legal entities

### ➔ Resident legal entities member State of european Union or other State party at the EEE having concluded convention with France

Since March 2010, the 1st, capital gains tax is calculated in the same conditions as those applicable to french resident legal entities.

### ➔ Resident legal entities not member State of european Union neither member of an other State party at the EEE having concluded convention with France, and resident legal entities in an ETNC

The tax calculation is different :

- costs of purchase and works : only deductible for their real amount (no fixed rate of 7,5% or 15%),
- deductible works : only building, rebuilding and extension (not improvement).
- depreciation of the purchase price and expenses (works), by 2% per whole year,
- no tax cut of 10% per year,
- no € 1,000 tax allowance,
- tax rate of 1/3, or 50% for entities in ETNC.

The tax representative in charge of the capital gains tax also guarantees the payment of the 3% annual tax, for non-European companies.

## Capital gains tax calculation for french partnerships

➔ The Form n°2048 IMM is only done for the partnership, considering the situation of each partner (page 3 of the form):

#### • Partners « private individuals »:

The capital gains is calculated according to the rules applying to individuals (page 2 of the form) and depends on the rights of the partner in the partnership and his tax residence.

The allowance of € 1,000 is however only applied once, whatever the number of partners.

#### • Partners who are legal entities with head office abroad:

The capital gains is calculated according to the rules applying to legal entities (page 4 of the form) and depends on the rights it has in the partnership, taxed at 1/3 or 50% (for ETNC).

### ➔ Exemptions

- the threshold of € 15,000 depends on the overall sale price, not on the rights of each partner,
- the partners who are legal entities are never exempted for duration of ownership,
- the exemption for sale of its property in France cannot be applied to foreign partners (only french resident partners can be exempted, if it concerns their main residence).

## The 3% tax

(art. 990 D and nexts French Tax Code)

All legal entities which, directly or indirectly, owning real estate in France or rights on them have to pay annually a tax of 3%, based on the market value of their property, before May 16<sup>th</sup> (art. 990 D Tax Code).

The fiscal representative in charge of the capital gains tax is responsible for the payment of this tax for legal entities whose head office is located out of European Union (art. 990 F Tax Code).

➔ **Exemption cases** (art. 990 E Tax Code) :

- States, International Organizations, public Institutions,
- Companies whose value of the real estate assets is less than 50% of its total assets,
- Companies quoted on the Stock Exchange,
- Companies whose head office is located in a State with which France has concluded an Agreement :
  - if the Company communicates location, description, market value of the real estate owned on the 1<sup>st</sup> January, name, address and rights of each partnership/shareholder on the 1<sup>st</sup> January,
  - or Pension funds and non-profit Institutions (if the real estate is necessary to their activity),
  - or estate or rights < € 100,000 or < to 5% of the value of the estate or rights.

## Deductible works

Expenses for building, re-building, extension and improvement (improvement works are not deductible for legal entities resident out of an EU Member country).

➔ Either, fixed rate of 15% of the acquisition price when the property is sold 5 years after its initial purchase (and if the seller is not a legal entity).

➔ Or for their real costs, with conditions:

- Improvement means works which give to the property something which didn't exist before or something which is more comfortable (creation of an elevator; another bathroom, windows for energy economies...).
- Maintenance, repair, and renovation works can never be deducted from the capital gains calculation.
- The works have to be made by a company. The costs of materials (bought alone without installation) can eventually be taken into account, but only if the seller bought land and if he is selling a building.

The seller has to produce :

- Company's invoices with legal mentions (art. 289 French Tax Code),
- proof of payment (bank statements of the seller).

## Special cases

➔ **Tax on pieces of land**

Towns can institute a tax on pieces of land which became building land.

The tax representative is also responsible for this tax. It applies to the first costly sale done after the land has become a building land.

After september 2009, 28th, this tax equal until now to 10% of the 2/3 of the sale price will be equal to 10% of the capital gain, i.e. the difference between the sale price and the purchase price updated with the latest price index.

➔ **Furniture**

The value of furniture sold with the property can be deducted from the sale price but only if its existence and its market value at the date of the sale is proved (invoices, authenticated inventory or inventory made by an appraiser).

## Tax rates

Seller « private individual »	
Resident in France	19% + social tax
Resident in EU	19%
Non-European resident	1/3
Resident ETNC	50%

Seller « French partnerships »	
Partner « private individual »	
Resident in France	19% + social tax
Resident in EU	19%
Non-European resident	1/3
Resident ETNC	50%
Partner « legal entity »	
Head office in France	Corporate tax
Head office in EU	Corporate tax
Head office out of EU and out of ETNC	1/3
Head office in ETNC	50%

Other legal entities	
Head office in France	Corporate tax
Head office in EU	Corporate tax*
Head office out of EU and out of ETNC	1/3
Head office in ETNC	50%

\*(For partnerships, do not hesitate to contact us)

Professional Sellers (Form 3005)	
Individual resident in France and EU	1/3
Individual resident in ETNC	50%
Entity resident in France and EU	Corporate tax
Entity resident in ETNC	50%
Other entities	1/3

## European countries and similar

Germany	Latvia
Austria	Lithuania
Belgium	Luxembourg
Bulgaria	Malta
Cyprus	Norway
Denmark	Netherlands
Spain	Poland
Estonia	Portugal
Finland	Czech Republic
France	Romania
Greece	United Kingdom*
Hungary	Slovakia
Ireland	Slovenia
Iceland	Sweden
Italy	

\* except Virgin Islands, Jersey, Guernsey, Isle of Man.

## Scale of usufruct

New scale (CGI, art. 669)	
Age of usufructuary	Usufruct value
< 21 years	90%
< 31 years	80%
< 41 years	70%
< 51 years	60%
< 61 years	50%
< 71 years	40%
< 81 years	30%
< 91 years	20%
≤ 91 years	10%