

DOCUMENTATION

ENGLISH

CAPITAL GAIN IN FRANCE

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

MARCH 2019



ACCREDITECO

YOUR NEW FISCAL REPRESENTATIVE

accrediteco@accrediteco.fr • <http://www.accrediteco.fr>

Accredited Tax Representative

9, rue du Bouloi, 75001 Paris • Phone : +33 (0)1 42 44 12 50

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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

Do not hesitate to contact us
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What is Accréditéco?

French fiscal rules require that non-resident sellers, domiciled outside European Union / European Economic Area (except Liechtenstein) appoint a fiscal representative for the sale of their property in France.

We are an accredited 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 tax return,
- 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, we guarantee the payment of the 3% annual tax (art. 990 F of the French Tax Code).

Our fees are calculated on the selling price of the property and adjusted according to each file. They are also deductible into the tax calculation.

→ When has the seller to appoint us?

The seller has to appoint a tax representative when he is domiciled outside European Union / European Economic Area (except Liechtenstein).

• Private individuals:

– if the share of the selling price owing to the non-resident seller is higher than € 150.000,

– and if the property was purchased less than 30 years (even if there is no capital gains tax to pay).

The threshold of € 150.000 is appreciated 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 or in a civil partnership, they are treated as a single fiscal household for the

appreciation of the € 150.000 threshold).

• **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 for each sale, if a foreign company is partner.

Are you non-resident?

→ Foreign legal entity:

When the head office is located out of France.

→ Private individuals:

• 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 in France, he can not be considered as a french tax resident.

This is the situation at the day of the sale which is taken into consideration.

When do you need a 2048 IMM form?

→ In every case, **except:**

Non-residents

- if the property was purchased > 30 years (only for private individuals)
- sale price ≤ € 15.000 (except sale of shares and sale by legal entities)
- exemption "principal residence"

Residents

- if the property was purchased > 30 years
- no capital gains tax to pay
- sale price ≤ € 15.000 (except sale of shares)



Capital gains tax calculation for individuals

→ Sale price:

The sale price is the price stated on the transfer act.

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

Following costs (if they are paid by the seller) are deductible : fiscal representative fees, VAT, agent fees, diagnosis, compensation for eviction of a tenant, costs to obtain the release of mortgage, or 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

→ Purchase expenses can be added to the purchase price:

• Fees acquisition :

– **paid acquisition:** either real costs (notary's fees, agency's fees, legal fees, VAT...), or 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 work done on the property are added to the price:

– either for their real costs with conditions (see § Work),

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

→ Capital gains calculation:

That is the difference between sale and purchase prices, minus the allowances for holding period.

It is no longer made any distinction depending on the type of the properties sold (building land and rights therein or other property and property rights) for the determination of the tax base real estate capital gains.

The rates are different for the determination of the the tax base of real estate gains in income tax and social security contributions.

In total, the income tax exemption is gained beyond a period of detention of twenty-two years.

A total exemption from social security contributions is gained beyond a holding period of thirty years.

For further information about the allowances schedule, see page 8.

→ Tax rate:

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Added to this are the social security contributions, the rate of which varies according to the organization of affiliation to the social security system (reduced rate in case of affiliation to a compulsory European social security scheme (except French) or Swiss).

→ Exemption for non-resident particular seller

(French Tax code art. 150 U-II 2°)

This exemption can only apply once, up to an amount of gain of €150,000 gain by seller (a couple consists of 2 sellers) if:

– the seller has the citizenship of a member of the E.U., or Iceland and Norway,

– has been fiscally resident in France for a continuous period of at least two years prior to the sale,

Nouveauté 2019

– not later than the 31st December of the 10th year following the transfer out of France of the fiscal residence of the seller,

– or at any time if the seller keeps the free disposal of the property since the 1st January of the year preceding the year of the sale.

_ the taxpayer must not have benefited from the exemption provided by art. 244 bis A 1-1° of the CGI (transfer of the principal residence in France of non-residents).

➔ **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 the property is held in joint ownership, you have to consider the sale price of each owner.
- 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 nor 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 (principal residence, expropriation, beneficiaries of an old age or disability pension).

Additional Tax

- From 1st January 2013, an additional tax on capital gain and by non-resident made by individuals or groups or companies falling under articles 8-8 ter of the CGI by non-resident individual taxpayers, has been established.

This tax does not apply to capital gains realized on the sale of building lands.

It is payable on the sale and due in respect of taxable capital gains in excess of € 50.000 according to the following scale applied to the total amount of the taxable gain:

Capital gain	Tax rate
From 50.001 to 60.000	2 % CG - $[(60.000 - CG) \times 1/20]$
From 60.001 to 100.000	2 % CG
From 100.001 to 110.000	3 % CG - $[(110.000 - CG) \times 1/10]$
From 110.001 to 150.000	3 % CG
From 150.001 to 160.000	4 % CG - $[(160.000 - CG) \times 15/100]$
From 160.001 to 200.000	4 % CG
From 200.001 to 210.000	5 % CG - $[(210.000 - CG) \times 20/100]$
From 210.001 to 250.000	5 % CG
From 250.001 to 260.000	6 % CG - $[(260.000 - CG) \times 25/100]$
Over 260.000	6 % CG

(CG = capital gain)

NB : The appreciation of the € 50,000 threshold is individually made (married or not), for individual seller (not for French partnerships).

Capital gains tax calculation for legal entities

Capital gains tax calculation for french partnerships

➔ The Fiscal Form n°2048 IMM is done for the partnership, by considering the situation of each partner (page 4 of the form):

- **Partners « private individuals »:**

The capital gain is calculated according to the rules applying to individuals (page 2-3 of the form) and depends on the rights of the partner in the partnership and his tax residence.

- **Partners who are legal entities with head office abroad:**

The capital gain is calculated according to the rules applying to legal entities (page 5 of the form) and depends on the rights the legal entities have in the partnership,

- ➔ **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 the 1st 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).

Capital gains tax calculation for foreign legal entities

- ➔ **Legal entities domiciled in the European Union or other State party at the EEE having concluded convention with France**

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

The appointment of the tax representative is not mandatory.

- ➔ **Legal entities neither domiciled in the European Union nor in another State party at the EEE having concluded convention with France**

The tax calculation is different :

- costs of purchase and work : only deductible for their real amount (no fixed rate of 7,5% or 15%),
- deductible work : only building, rebuilding and extension (not improvement).
- depreciation of the purchase price, purchase fees and expenses (work), by 2% per whole year,
- no tax cut per year,
- tax rate of 31% for 2019 and reducing after this date.

The tax representative in charge of the capital gains tax also guarantees the payment of the 3% annual tax.



The 3% tax

(art. 990 D and next French Tax Code)

All legal entities, directly or indirectly, owning real estate in France or rights on them have to pay annually before May 16th a 3% annual tax, based on the market value of their property at the day of the 1st January (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 the 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 at the 1st January, of the real estate, name, address and rights of each partner/ shareholder at the same date,
 - 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.

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Observations

Deductible work

➔ **Either, fixed rate of 15%** of the purchase 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, under conditions:**

- Expenses for building, re-building, extension and improvement are deductible (improvement work are not deductible for legal entities resident out of an EU Member country).
- Improvement means work 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 saving...).
- Maintenance, repair work can't be deducted from the capital gains calculation.
- The work has 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 a 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

→ Taxes on pieces of land

In addition to normal capital gains tax, two other taxes are potentially payable on the first sale of land that became buildable.

• French Tax Code : art.1529 : “Taxe Forfaitaire communale”

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

The fiscal representative is also responsible for this tax.

It applies to the first costly sale done after the land has become a building land.

This tax only concerns the sale of land by individuals and partnerships.

There are some exemptions from these taxes as follows :

- sale by an elderly or disabled person on low income,
- land sold for less than three times the original purchase price,
- sale of the land \leq to € 15.000,
- land became a building land for more than 18 years,
- sale of building annexes belonging to the owner.

This tax is 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.

• French Tax Code : art.1605 nonies : “Taxe sur les terrains devenus constructibles”

This tax, payable on the first sale of the land from the 29 July 2010, applies to all the sellers and to any bare land which become building land by a plan established after the 13th January 2010.

The tax is calculated on the difference between the selling price and the purchase price on which is

applied a tax cut of 10% by year from the 8th year after the date when the land became building land.

The tax rate is :

- 0% if the selling price is less than 10 times the purchase price
- 5% if the selling price is between 10 and 30 times the purchase price
- 10% if the selling price is more than 30 times the purchase price.

These 2 taxes can be both payable.

→ Furniture

The value of furniture sold with the property can be deducted from the selling 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 »	
19% + social tax	

Seller « French partnerships »	
Partner « private individual »	
19% + social tax	
Partner « legal entity »	
Head office in France	Corporate tax
Head office in EU	Corporate tax
Head office out of EU	31% (year 2019)

Other legal entities	
Head office in France	Corporate tax
Head office in EU	Corporate tax*
Head office out of EU	31% (year 2019)

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

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%

European countries and similar

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

* Tax representative necessary

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

*** Please contact us after the end of the negotiations Brexit fixed March 29th, 2019



Allowances for duration of ownership applying to sales completed as september 1st, 2014

Length of detention (years)	Allowances	
	Capital gain	Social taxes
1 à 5	0 %	0 %
6	6 %	1,65 %
7	12 %	3,30 %
8	18 %	4,95 %
9	24 %	6,60 %
10	30 %	8,25 %
11	36 %	9,90 %
12	42 %	11,55 %
13	48 %	13,20 %
14	54 %	14,85 %
15	60 %	16,50 %
16	66 %	18,15 %
17	72 %	19,80 %
18	78 %	21,45 %
19	84 %	23,10 %
20	90 %	24,75 %
21	96 %	26,40 %
22	100 %	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 %

