

CHANGES IN FRENCH CAPITAL GAIN TAX FROM THE 1ST JANUARY 2002

Capital gain tax is payable in France on the sale of property unless it is the main residence of the owners (time condition apply to the definition of main residence unless the move is motivated by family or professional reasons).

In most circumstances when the owner is non-resident the capital gain tax represents a 1/3rd of the net gain. It is not the purpose of this article to detail the calculation of gross and net capital gain and taxes. It is highlighting the 23rd of December 2002 administrative instruction relating to the obligation for non-resident to name a tax representative when selling a property.

The instruction was aimed at simplifying the current procedure but in fact it will probably worsen the financial position of non-resident vendors.

When a property is sold in France the owner must calculate the capital gain, present a form 2090 or 2090bis to the tax authorities, pay the relevant tax and name a guarantor or tax representative domiciled in France. This is usually taken care off by the Notaire who will not release the funds until all taxes are cleared. When there is no capital gain either because no gain has been made or because the application of index and deductions reduce the gain to nil, the owner, via the Notaire could ask for a tax representative dispensation. If it is possible for an French resident individual to act as guarantor in most cases it is not advisable or not acceptable to the tax authorities and specific organisation act as such and usually charge around 1% of the selling price.

As from the 1st of January 2003 dispensation of tax representative will be automatic providing that the selling price is less than 100 000 Euro or that the property has been owned for more than 22 years. In any other cases whether there is a gain or not, no dispensation will be granted. This in effect means that when selling a property more than 100 000 Euro, the vendor will have to add to his cost a minimum of 0,75% + VAT of the selling price payable to the tax representative and up to 1% + VAT in addition to any capital gain tax payable.

As far as company ownership is concerned the tax representative will always be required and proof of payment by the company of deductible costs will have to be provided (practically this means that it is essential to check that invoices are made up to the right company name).

There are no changes for ownership by SCI.

On this point it is useful to recall that all work and improvement invoices must be made to all owners name in particular in case of joint ownership as only the people named on the invoice will be able to claim the amount paid.

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