# DOCUMENTATION CAPITAL GAIN IN FRANCE

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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

ACCREDITECO

YOUR NEW FISCAL REPRESENTATIVE

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afaq ISO 9001 Qualité AFNOR CERTIFICATION

This document presents the main rules applicable
to tax representation
and capital gains tax
for **non-residents**.

Find all the laws and tax forms
on our website
**www.accrediteco.fr**

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# About Accrediteco ?

## About us

Accrediteco is a private company specialised in **tax representation** of non-residents for capital gains tax purposes.

We have been **accredited by the French tax authorities** to act as tax representatives in France and in Saint Barthelemy since 2008.

We offer a personalised service to non-residents and notaries.

Accrediteco has acquired a long experience and has developed a qualified, fast and competitive service.

Our team of legal experts is at your disposal to answer any questions you may have relating to capital gains tax on property transfers and about the rules on appointing a tax representative.

Our fees:

- are calculated on the sales price of the property and adjusted according to each file,
- are deductible from the net capital gain, and,
- can be paid using the proceeds of the sale.

## What we do as accredited tax representative

We are responsible:

- for filling out and signing the capital gains tax return,
- for securing the payment of any additional tax that may be assessed by the tax authorities until the end of the time limit,
- if the seller is a legal entity, we guarantee the payment of the 3% annual tax (art. 990F of the French Tax Code).

## ISO 9001 quality management

We are committed to a «Quality» approach. **Our company is the only capital gains fiscal representative to be ISO 9001 certified.**

With this in mind, we make every effort to:

- Satisfy the requirements of our customers (efficiency, reliability, price and respect of time limits),
- Comply with legal requirements.

# When do you need a tax representative?

**APPOINTING A TAX REPRESENTATIVE IS MANDATORY:**

- **if the seller resides outside the European Economic Area (EEA), or in Liechtenstein,**
- **whether or not there is a taxable capital gain**
- **and in the following cases:**

### Sales by individuals:

If the sales price exceeds € 150k, AND if the property has been owned for less than 30 years.

*Precisions regarding the € 150k threshold:*

- for married couples or "PACS" civil partnerships: the total sales price,
- for joint owners: the share of the sales price attributed to each joint owner

### sales by french partnerships

If the total share of each non-resident, non-corporate partner exceeds the € 150k threshold AND if the property was acquired less than 30 years ago.

If a foreign company is a partner: a tax representative is mandatory, regardless of the length of ownership and the amount of the sales price

### sales by legal entities based outside the EEA

A fiscal representative is mandatory **in all cases**.

***Note :***

- Your status as a tax resident or non-resident is assessed on the day of signing the sale,
- Tax residents are liable for income tax in France on all their income of French or foreign source. Taxpayers that do not file an income tax return in France for all their income are considered to be non-residents for tax purposes, even if they declare property income.
- Legal entities are "non-resident" if their registered office is established outside France.
- Switzerland is not a member of the EEA.

# When do you need to file form 2048?

In all cases, except:

| Non-residents | Residents |
|---|---|
| • Length of ownership ≥ 30 years (individuals only)<br>• Sales price ≤ € 15k in full ownership (except sales of shares and sales by legal entities)<br>• Exemption for the former principal residence in France of non-residents (article 244 bis A 1° of the CGI) | • Length of ownership ≥ 30 years<br>• Zero tax<br>• Sales price ≤ € 15k in full ownership (except sales of shares)<br>• The principal residence is exempt |

# How the capital gain is calculated?

## Capital gains earned by individuals

The capital gain is the difference **between the sales price and the purchase price, minus an allowance for length of ownership.**

### The sales price

- The sales price is increased by any compensation and expenses paid by the purchaser in the place of the seller.
  Example: capital gains tax paid by the purchaser, eviction compensation paid to the tenant by the purchaser on behalf of the seller, etc.
- The sales price is reduced by the costs paid by the seller, on the basis of supporting documents. These costs are limited by law to: the tax representative's fees, VAT, commission paid to an intermediary or agent, the cost of the compulsory diagnostic reports, eviction compensation, the fees for de-registering the mortgage charge and the fees paid to an architect for obtaining a building permit (CGI, art.150 VA-III CGI).

***Rules on deducting the value of furniture:*** *The value of moveables that are sold with the real estate - such as furniture - can only be deducted from the calculation of the capital gain if proof of their existence and market value on the day of the sale is presented, such as by way of invoices or an inventory drawn up by a auctioneer.*

### The acquisition price

The acquisition price is defined as the price paid by the seller, stated in the deed of purchase, or the value of the property stated in the gift deed or in the French death duties return.

It is reduced by the depreciation allowed and deducted for tax purposes:

- This only applies to non-professional furnished rental provider income has been declared under the BIC category (Business and Industrial Profits).
- Following structures are excluded from reintegration: students residences, elderly people with disabilities, etc.
- The 7,5% and 15% flat rates are calculated on the unamortized purchase price.

The acquisition price is increase by:

- ***If the acquisition was for consideration:***
  - either the actual costs (notary's fees, agency fees, legal fees, VAT, etc.),
  - or a flat rate of 7.5% of the purchase price.

  If the acquisition was agreed at an all-in price (i.e. all costs and fees were paid by the seller), nothing can be deducted.
- ***If the acquisition was without consideration (inheritance, gift):*** only the actual costs are deductible (not the 7,5% flat rate).

Capital investment spent on the property is also deductible:

- **either at actual cost, subject to conditions:**

- Only building, rebuilding, extension or improvement* expenses are deductible.

  **"improvements" add improved appointments or comfort to the property that are better suited to modern living conditions (installing a lift, fitting double-glazing, building a bathroom, etc.).*

- Maintenance and repair works are not deductible from the net capital gain.
- The works must have been done by a registered business, so the following are excluded:
  - works done by the owner or by a third party that is not a registered business (e.g. a salaried labourer),
  - the cost of materials purchased by the owner, even if they are fitted by a registered business.

- The expenses must have been paid for by the seller, with proof of payment supported by invoices and bank statements. Expenses that have already given rise to tax allowances are excluded.
- For constructions built by the seller on bare land they acquired, the purchase price is equal to:
  - the cost of the construction works include architect's fees, taxes and invoices.
    If the works were not carried out by a registered business: the purchase price of the materials for the construction paid until the date of completion + cost of labour employed. Works carried out by the sellers themselves are not allowable.
  - and the acquisition price of the land.
- About renovations and non-professional furnished rental: the amount of work deducted based on actual expenses must also be reduced by the tax-deductible depreciation.

• **or a lump sum of 15% of the acquisition price, when a built property is sold more than 5 years after its acquisition, subject to the completion of work.**

## ➜ Calculation of the net taxable capital gain

The net capital gain is the difference between the sales price and the purchase price, minus an allowance for length of ownership (article 150 VC I of the CGI). (see the table below for the allowances for length of ownership).

| Length of ownership | Allowance | |
|---|---|---|
| years | capital gains tax | social taxes (PS) |
| 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% |

| Length of ownership | Allowance | |
|---|---|---|
| years | capital gains tax | social taxes (PS) |
| 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% |

## ➜ Taxes on capital gains

- Income tax: 19%
- **PLUS** social taxes: the rate depends on which state social security system applies:
  - 7.5% if the sellers are covered by a compulsory Swiss, UK or EU system (France excepted), unless the seller receives a French pension,
  - 17.2% in other cases.
- The tax on capital gains above € 50k may be applicable, based on the scale below. This tax does not apply to capital gains earned on the sale of building land:

| Taxable capital gain | Tax | Simplified calculation |
|---|---|---|
| From 50 001 to 60 000 | 2% CG - [(60 000 - CG) x 1/20] | 7% CG – 3 000 € |
| From 60 001 to 100 000 | 2 % CG | 2% CG |
| From 100 001 to 110 000 | 3% CG - [(110 000 - CG) x 1/10] | 13%CG – 11 000 € |
| From 110 001 to 150 000 | 3 % CG | 3% CG |
| From 150 001 to 160 000 | 4% CG - [(160 000 - CG) x 15/100] | 19% CG – 24 000 € |
| From 160 001 to 200 000 | 4% CG | 4 % CG |
| From 200 001 to 210 000 | 5% CG - [(210 000 - CG) x 20/100] | 25% CG – 42 000 € |
| From 210 001 to 250 000 | 5% CG | 5 % CG |
| From 250 001 to 260 000 | 6% CG - [(260 000 - CG) x 25/100] | 31% CG – 65 000 € |
| More than 260 000 | 6% CG | 6% CG |

*(CG = taxable capital gain)*

*Note:*

- *For spouses, concubines and PACS civil partners, the € 50k threshold is assessed with regard to the share of the capital gain accruing to each member of the couple.*
- *For SCIs, the tax applies to the overall net capital gain of the SCI on the share accruing to each non-corporate partner.*

## Capital gains earned by non-transparent companies

A distinction should be made between capital gains earned by companies registered outside the EEA and capital gains earned by companies registered in the EEA.

### Companies registered outside the EEA

The rules for calculating the sales and acquisition prices are the same as for individuals.

However, there are exceptions regarding the calculation of the taxable capital gain:

- Acquisition costs and works: only actual costs can be deducted (the 7.5% and 15% flat rates are excluded),
- Deductible work means exclusively building, rebuilding and extension works (improvements and repairs are excluded),
- No allowance for length of ownership,
- Purchase price and works are reduced by 2% per year of ownership, only on the built part,
- The tax rate applicable is that of corporation tax,
- Appointing a tax representative is compulsory, regardless of the sales price and the length of ownership.

### Companies registered in the EEA (except Liechtenstein) :

Tax is determined according to the company tax base and rates as those applicable to French legal entities.

Although a tax representative is not compulsory, we are at your disposal to offer you our services for calculating the capital gain.

## Real estate capital gains earned by partneships

This section concerns companies registered in France that are subject to income tax (SCI, SNC, GFA...).

The calculation is made in the name of the company, taking into account the capacity of each partner (individual or company), their share in the capital and the tax rules applicable to each.

Note :

- The € 15k threshold is on the overall selling price,
- The allowance for the sale by foreigners of their residence in France (150 U II 2 ° of the CGI) is not applicable,
- The tax on high real estate capital gain over € 50k applies to the overall net capital gain of the SCI accruing to all of the non-corporate partners.

## Taux d'imposition

| 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 | Corporate tax |

| Autres sociétés | |
|---|---|
| Head office in France | Corporate tax |
| Head office in EU | Corporate tax |
| Head office out of EU | Corporate tax |

## Barème de l'usufruit

| Barème (CGI, art 669) | |
|---|---|
| Âge de l'usufruitier | Valeur de l'usufruit |
| < 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% |

# Exemptions and deductions

## A - Exemptions and deductions applicable exclusively to non-residents

### 1 - Allowance for the sale of a property located in France by non-resident taxpayers (CGI, art. 150 U, II-2°)

- This allowance is given only on the first taxable sale by a non-resident, signed after 1st January 2006.
- The seller must prove that they have been domiciled for tax purposes in France for all their income for a continuous period of at least two years at any time prior to the sale.
- If the seller transferred their tax domicile outside France more than 10 years ago, they must also have kept the free disposal of the property since 1st January of the year preceding that of the sale.
- The transferor must be a citizen of a member state of the European Economic Area (except Liechtenstein).
- The allowance only applies to individuals (partners in a partnership are excluded).
- The allowance is applicable to the net capital gain (after application of the allowance for length of ownership):
  - € 150k per seller,
  - € 300k for a couple (Note: € 150k on their respective shares).

### 2 - Exemption for previous principal residence located in France (Art. 244 bis A I §1 of the CGI)

Conditions :

- the property must have been the principal residence of the seller on the date they transferred their tax domicile outside France,
- the tax domicile must be transferred to another Member State of the European Union or to a State that has signed an administrative assistance agreement with France, as well as a mutual assistance agreement for recovering tax,
- the sale must be signed no later than 31st December of the year following that of the transfer of tax domicile,
- the property must not have been made available to third parties, free of charge or for payment, between the date of transfer of tax domicile and the date of the sale.

Limits :

- the exemption is not applicable if the seller has already benefited from the exemption provided for by article 150 U, II-2 ° of the CGI,
- reciprocally, the exemption provided for in Article 150 U, II-2 ° of the CGI is not applicable if the seller has already benefited from the "principal residence" exemption.

## B - Exemptions and reductions applicable also to non-residents

### 1 - Exemption arising from the sale of a right to build a vertical extension (article 150 U, II-9° of the CGI).

### 2 - Exemptions based on the type of transactions (article 150 U, II-4° and 5° of the CGI)

(expropriation, redistribution of plots)

### 3 - Exemption based on the value of the sale (article 150 U, II-6 of the CGI)

Exemption when the sales price is less than or equal to € 15k.

For sales of property owned jointly, this threshold is assessed with regard to each joint share.

Where ownership rights are divided between life interest holders and bare owners, the €15k threshold is assessed with regard to each undivided share in full ownership.

### 4 - Exemption based on the length of ownership (article 150 VC of the CGI)

After the first five years, there is an allowance for each year of ownership, meaning that after a certain number of years of ownership, no capital gains tax will be due.

### 5 - Exemption based on the capacity of the seller (article 150 U, III of the CGI)

Applicable to old-age pensioners or holders of certain disability cards.

### 6 - Exemption on certain divisions between heirs (article 150 U, IV CGI)

### → 7 - Exemptions on sales agreed directly or indirectly for the benefit of social housing organisations (article 150 U, II-7° and 8° CGI).

## ↓ C - Other exemptions only applicable to french residents

### → 1 - Exemption for the sale of a principal residence (article 150 U, II-1° CGI)

### → 2 - Exemption for people who sell in order to move into a home for the elderly or disabled (article 150 U, II-1° ter CGI)

### → 3 -Exemption for the first sale of a home other than the principal residence, as long as part or all of the proceeds of the sale are used to acquire a principal residence (article 150 U, II-1° bis CGI)

# TAXES ON BUILDING LAND

## ↓ Local tax on sales of bare land that has become buildable (art. 1529 of the CGI)

### → Persons concerned:

- ↓ The flat-rate tax applies to sales by individuals and partnerships.
- ↓ Sellers whose tax domicile is not in France are also liable.

### → Property concerned:

The tax only applies to transfers of bare land which has become buildable because of its classification by a local urban plan. It concerns bare land, building land and land with buildings to be demolished.

### → Taxable transactions:

Only first transfer of land for consideration are subject to this tax:

- ↓ Transfers of rights relating to land (bare ownership, usufruct) and corporate shares are excluded,
- ↓ Transfers without consideration are excluded.

### → Exempt transactions:

The tax does not apply:

- ↓ When the sale price is less than three times the purchase price,
- ↓ To sales of land that have been classified as building for more than 18 years,
- ↓ To sales of land that are exempt from capital gains tax for individuals, in application of articles 150 U - II 3° to 8° of the CGI.

### → Methods of calculating the tax:

- ↓ **Taxable event:** the **first** sale, **for consideration**, of bare land after its classification as a building zone,
- ↓ **Basis:** the sales price minus the indexed acquisition,
- ↓ **Rate :** 10 %,
- ↓ **Obligation :** an accredited tax representative must be appointed for sales by non-residents.

Note :

- ↓ The tax is cumulative with capital gains tax.
- ↓ The tax is still due even if the land has been owned by the seller for more than 30 years.

## ↓ National tax on sales of bare land that has become buildable (art. 1605 nonies of the CGI)

This tax applies to sales for consideration of bare land or interests relating to bare land, due to its classification as building land after 13/01/2010 by a local planning development plan.

### Taxable persons:

- This tax applies to sales by individuals and by legal entities regardless of their tax regime or status,
- Sellers whose tax domicile is not in France are also liable.

### Taxable properties:

- Bare land and rights relating to bare land (bare ownership, usufruct...),
- Land with a building on it that is not suitable for any use (a ruin, unfinished building site, etc.),
- Land divided into lots,
- Land registered in the assets of a company.

### Taxable transactions:

Only the **first** sale of land that becomes buildable after 13/01/2010 is subject to tax. Transfers without consideration are excluded.

### Exempt transactions:

This tax does not apply:

- When the ratio between the sale price and the purchase price or the market value does not exceed 10,
- Transfers of land that have been classified as building land for more than 18 years,
- Transfers for consideration of bare land (or interest relating to land) that has become buildable (for which the classification decision was issued no later than 13/01/2010 inclusive).

### Methods of calculating the tax:

- **Taxable event: first** transfer **for consideration** of bare land that becomes buildable after 13/01/2010,
- **Basis:** difference between the sales price and the indexed acquisition price. The result is then reduced by an allowance of 10% per year of ownership beyond the eighth year following the date on which the land became buildable.
- **Rate:** 5% when the ratio between the sale price of the land and the purchase price is between 10 and 30, and 10% when the ratio is above 30.
- **Obligation:** to appoint an accredited tax representative for sales by non-residents.

Note:

- These two taxes are cumulative with capital gains tax.
- These two taxes are still due even if the land has been owned for more than 30 years.

## 3% ANNUAL TAX (Art. 990 D s. et seq CGI)

All legal entities who, on 1st January of the tax year, directly or indirectly own buildings located in France, or real property interests relating to such assets, are liable to an annual tax of 3% of the market value of these buildings or interests.

### The tax applies to all legal entities

Legal persons, organisations, trusts or any other comparable institutions (foundations, partnerships, etc.)

A tax return must be filed before 15 May each year.

If the seller is not established in the European Union, Iceland or Norway (CGI, art. 990 F), the tax representative is responsible for paying this tax for the year of the sale.

### Exceptions (CGI, ART. 990 E)

- International organisations, sovereign States and public institutions.
- Legal entities whose capital is not invested predominantly in real estate,
- Legal entities whose shares are traded on a stock market,
- Legal entities that have their registered office in France, in a Member State of the European Union or in a country or territory that has signed an administrative assistance agreement with France, or in a State that has signed a treaty with France allowing them to benefit from the same treatment as entities having their registered office in France **(under conditions)**.