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New features of the Finance Act for 2025 and tax news for foreigners in France

1- Changes to the calculation of capital gains under the LMNP scheme

The French Finance Act abolishes a tax advantage for non-professional furnished rentals (LMNP), stipulating that depreciation deducted during the rental period is taken into account when the property is sold to calculate the related capital gain.

Thus, when calculating the capital gain on the sale of a property by a taxpayer subject to the LMNP regime, the purchase price will be reduced (and therefore the capital gain increased) by the amount of depreciation previously allowed as a deduction. In practice, depreciation, which will have reduced rental income taxable at the progressive rate, will increase the capital gains base subject to income tax at the proportional rate of 19% (excluding any surtax).

2 - Increase in registration duties and land registration tax on sales

The Finance Act provides for the possibility of departmental councils raising the departmental share of transfer duties on real estate sales from 4.5% to 5% for deeds and agreements signed between April 1, 2025 and March 31, 2028. The maximum rate of transfer duties would then rise from 5.81% to 6.31%. However, this increase would not apply to the first purchase of a principal residence.

4 - Differential tax on high

The Finance Act introduces a Contribution Différentielle sur les Hauts Revenus (CDHR) to guarantee a minimum tax rate of 20% on the incomes of the wealthiest taxpayers.

This scheme, applicable only to income for 2025, concerns tax households resident in France whose reference tax income exceeds €250,000 for a single person and €500,000 for a couple subject to joint taxation.

5 - Notions of "tax domicile" under domestic law and "tax residence" under treaty law: primacy of treaty law over French domestic law

Regardless of nationality, under French domestic law a taxpayer is in principle considered to be domiciled in France for tax purposes when he or she meets one of the alternative criteria set out in article 4 B of the CGI (home in France / main residence in France / main professional activity in France / center of economic interests in France).

Tax administration doctrine states that if, under a tax treaty, a person is a resident of another state, he or she cannot be regarded as fiscally domiciled in France for the purposes of implementing French domestic law, even though he or she would be domiciled there for tax purposes within the meaning of Article 4 B of the CGI (BOI-INT-DG-20-10-10 of September 12, 2012, no. 50).

International tax law therefore takes precedence over French domestic law.

In conclusion, if a person is considered a tax resident of another country under the terms of a bilateral tax treaty, his or her French-source wages are subject to withholding tax on account of his or her status as a non-French tax resident (article 182 A of the CGI).

In a ruling that has turned the HR departments of French companies employing people who are not tax residents in France upside down, the Conseil d'Etat has contradicted the tax authorities' doctrine (CE, February 5, 2024, no. 469771) and, a fortiori, the principle of primacy of (international) treaty law over French domestic law.

In a press release dated April 29, 2024, the Administration stated that it maintained the position expressed in its Official Bulletin, announcing that this would be confirmed in a forthcoming Finance Act.

This has now been achieved: article 4B of the French General Tax Code now specifies that a person meeting at least one of the domicile criteria set out in this article (home in France / main residence in France / main professional activity in France / center of economic interests in France) cannot be considered as having his or her tax domicile in France, when, under the terms of a tax treaty, he or she is not considered a resident of France.

In this case, even if the person meets only one of the criteria set out in article 4B of the CGI, the withholding tax provided for non-residents will still apply.

5 - 10-year recovery period for false foreign tax domiciliation

Pursuant to article L. 169 of the LPF, the Administration's right of recovery is exercised, in principle, until December 31st of the third year following the year in respect of which the tax is due.

From now on, the tax authorities will have a ten-year recovery period when an individual claims a false tax domicile abroad.

This new system applies not only to income tax, but also to registration fees and the IFI.

6 - Refund of capital gains tax on the sale of substantial shareholdings by non-residents

In principle, capital gains realized on the sale of securities are taxable in the country of tax residence.

Depending on the provisions of the relevant tax treaty, the seller who owns more than a 25% stake in a French company may be required to pay withholding tax in France on the capital gain arising from the sale.

Article 244 bis B of the French General Tax Code (CGI) imposes a levy on capital gains realized by non-resident individuals or legal entities on the sale of securities representing at least a 25% interest in a French company subject to corporate income tax.

The Finance Act includes a measure to bring the levy under article 244 bis B of the CGI into line with European Union law, following a decision by the Conseil d'Etat on May 31, 2024, which ruled that the fact that individuals not domiciled in France could not benefit from the deductions for length of ownership provided for tax residents was contrary to the principle of free movement of capital.

Individuals may now lodge a claim for reimbursement of the levy under article 244 bis B of the CGI, in the amount of the excess between the amount of tax calculated according to the progressive tax scale applicable to French tax residents, after application of deductions for length of ownership, and the levy reserved for non-residents.

The new system applies to refund applications submitted on or after November 22, 2024.

7 - Obligation to declare digital assets: Reinforcement of control procedures and penalties

Individuals or legal entities domiciled or established in France are required to declare, at the same time as their income tax return, the references of digital asset accounts opened, held, used or closed with companies, legal entities, institutions or organizations established abroad.

In the event of non-declaration, specific fines apply: €750 per undeclared account and €125 per omission or inaccuracy, capped at €10,000 per declaration. These amounts may be increased to

€1,500 and €250 if the market value of the accounts exceeds €50,000 at any time during the year.

The French Finance Act reinforces the procedures for administrative controls and the penalties applicable in the event of non-compliance with this reporting obligation.

Individuals who have failed to comply with this reporting obligation at least once in the previous 10 years may now be asked by the tax authorities for information or proof of the origin and acquisition methods of digital assets held in an undeclared portfolio (LPF, art. L. 23 C).

In the absence of a response within 60 days (90 days in the event of an unsatisfactory response), these digital assets would be deemed, in the absence of proof to the contrary, to constitute assets acquired free of charge and subject to taxation at the rate of 60% (CGI, art. 755 and 777).

The 80% surcharge provided for in article 1729-0 A of the CGI applies to assets that are or have been included in one or more digital asset portfolios that should have been declared under article 1649 bis C, with a minimum "floor" equal to the flat-rate penalties provided for in article 1736, X of the CGI.

The Administration now has a right of recovery extended to 10 years, in the event of non-compliance with the reporting obligation relating to digital asset accounts (LPF, art. L. 169, al. 4 amended).

8- Management packages: tax changes

Management package instruments are mainly used to structure the legal aspects of company takeovers, particularly in the context of leveraged buy-outs (LBOs). They aim to align the interests of a company's managers and employees with those of its financial investors.

In accordance with the provisions of article 163 bis H, I and II of the CGI, the new regime applies to the net gain realized on securities subscribed or acquired by employees or managers (or allocated to them) and acquired in consideration for the duties of employee or manager exercised in :

- the company issuing the securities,

- any company in which the latter directly or indirectly holds a share of the capital (daughter company),

- or in any company that directly or indirectly holds a share in the capital of the issuing company (parent company).

The wording of article 163 bis H of the French General Tax Code takes up the notion of gains "acquired in consideration of the functions" of an employee or manager as defined by the Conseil d'Etat in its landmark judgments of July 13, 2021, without however providing a legal definition.
According to our information, this wording is intended to bring within the scope of the new system only those earnings likely to be reclassified as wages in accordance with the interpretation set out by the Conseil d'Etat in the aforementioned rulings. As a result, gains that

cannot be reclassified as wages and salaries in the light of administrative case law would fall outside the scope of article 163 bis H of the CGI.

We await with interest confirmation from the French tax authorities on this point.

Given the wording of article 163 bis H of the French General Tax Code, we believe that, where the condition relating to the consideration for the employee's or executive's duties is met (in particular with regard to contractual agreements binding the employee or executive to the company subsequent to the acquisition or subscription of their shares), the scheme is intended to apply to gains arising from management package instruments, whether or not they come under a qualified scheme (stock option plans, bonus share plans and BSPCE).

In accordance with the provisions of article 93, IV-A of the Finance Act, the new regime codified in article 163 bis H of the CGI applies to disposals, transfers, conversions or leases of securities carried out since February 15, 2025 (the day after the Finance Act is enacted).

The fact that the securities sold were acquired, subscribed for or allocated prior to this date is therefore irrelevant.

This new system sets a threshold corresponding to three times the financial performance of the issuing company during the period the shares are held:

If the triple threshold is not reached: the gain on disposal of these securities may be taxed under the capital gains regime (30%), provided that the holder of the securities bears a real risk of capital loss and has held the securities for at least two years.

If the triple threshold is reached: beyond this threshold, the gain will continue to be taxed according to the common law rules for salaries and wages (progressive scale of income tax + 10% employee contribution).

9- Cotisation sur la Valeur Ajoutée des Entreprises (CVAE - corporate value-added tax)

Cotisation sur la valeur ajoutée des entreprises (CVAE), which, along with the cotisation foncière des entreprises (CFE), is one of the two components of the contribution économique territoriale (CET). It is based on the value added produced, and is payable by companies subject to the CFE whose sales, excluding tax, exceed €500,000, unless exempted.

The maximum applicable CVAE rate, which stands at 0.28%, is due to fall gradually from 2024 to 2026, disappearing for good in 2027.

This downward trajectory has been reviewed and corrected by the Finance Act for 2025, with the phasing-out scheduled for 2027 frozen and postponed to 2028 (0.19%) and 2029 (0.09%), for total disappearance in 2030.

At the same time, the reduction in the CET capping rate (i.e. CFE+CVAE) is also postponed and will remain fixed at 1.531% of value added for 2026 and 2027, then decrease to 1.438% in 2028 and to 1.438% in 2027.

10- Agricultural sector : support measures

Capital gains realized (for valuable consideration or free of charge) during or at the end of operations by taxpayers subject to income tax (in the context of a commercial, industrial, craft, liberal or agricultural activity) and whose revenues do not exceed certain thresholds are exempt in whole or in part, provided that the activity has been carried out on a professional basis for at least 5 years and that the property sold is not building land (article 151 septies of the CGI).

Net capital gains are fully tax-exempt when annual revenues (excluding VAT) do not exceed (article 151 septies of the CGI) :

- 250,000 for companies whose main business is selling goods, objects, supplies and food to be taken away or consumed on the premises, or providing accommodation
- 90,000 for service providers (BIC), including direct rental of furnished accommodation (including LMP) and BNC.
- **350,000 for agricultural businesses.**

For sales made during fiscal years beginning on or after January 1, 2025, capital gains realized by companies engaged in agricultural activities are fully **exempt** when annual revenues are less than or equal to €450,000, and degressively exempt when revenues are greater than €450,000 and less than €550,000.

In practice, only the sale of a sole proprietorship, a complete branch of activity or all the rights or shares held by a taxpayer carrying on his professional activity within the framework of a company whose profits are subject to corporate income tax in his own name, and which are considered as assets allocated to the exercise of the profession, benefit from this revaluation of the limits (isolated sales of assets, like isolated sales of shares in corporate income tax companies, are not eligible for the benefit of these revalued limits.

These higher thresholds apply to transfers made to:⊗ one or more natural persons who can justify the granting of aid for the installation of young farmers (mentioned in article 73 B of the CGI) in respect of the same transfer;⊗ or a company or grouping, each partner or member of which can justify the granting of the aforementioned aid in respect of the same transfer.

Individuals can opt to benefit from an exemption on capital gains realized on retirement, on the sale of their sole proprietorship for valuable consideration (sales or contributions to a company), or on the sale of all the rights they hold in a partnership in which they have carried on their professional activity for at least 5 years (article 151 septies A of the CGI).

When the conditions for exemption on retirement are met, short- or long-term capital gains from the sale of fixed assets (BIC, BNC and BA) are fully exempt from income tax, with the exception of capital gains on real estate, which remain taxable under ordinary law.

In particular, this exemption is conditional on the transferor ceasing all management functions and all salaried activities in the transferred sole proprietorship or in the company or grouping whose rights or shares are transferred, and claiming his or her retirement rights, within 24 months of or prior to the transfer.

For financial years beginning on or after January 1, 2025, the scope of the exemption for capital gains realized on retirement, provided for in article 151 septies A of the CGI, has been extended to 72-month sales of rights or shares in agricultural companies or groups.

To benefit from this new application of article 151 septies A of the CGI, transfers for valuable consideration must be made to:⊗ one or more natural persons who can justify the granting of aid for the installation of young farmers (mentioned in article 73 B of the CGI) in respect of the first transfer;⊗ or a company or grouping each of whose partners or members can justify the granting of the aforementioned aid in respect of the first transfer.

Capital gains realized on the transfer of a sole proprietorship (or a complete branch of business, or items assimilated to a complete branch of business including goodwill or a customer base) are, by option, fully or partially exempt (depending on the value of the items transferred), provided that the business has been in operation for at least 5 years (article 238 quindecies of the CGI.

Transfers of sole proprietorships or complete branches of activity are fully exempt when the stipulated price of the elements transferred, or their market value, to which are added capital charges and indemnities stipulated in favor of the transferor, is less than €500,000, and partially exempt when this price or value is between €500,000 and €1,000,000.

This exemption applies to all short-term and long-term capital gains on fixed assets arising from the transfer, with the exception of capital gains on real estate, which are still taxable under ordinary law.

For fiscal years beginning on or after January 1, 2025, the exemption thresholds set out in article 238 quindecies of the CGI are raised to €700,000 (total exemption) and €1,200,000 (partial exemption) respectively.

These higher thresholds apply to transfers made to:⊗ one or more natural persons who can justify the granting of aid for the installation of young farmers (mentioned in article 73 B of the CGI) in respect of the same transfer;⊗ or a company or grouping each of whose partners or members can justify the granting of the aforementioned aid in respect of the same transfer.

11- Cash register software: removal of individual certificates

Since January 1, 2018, anyone (natural or legal person, private or public) liable to VAT must, if they make supplies of goods and services not subject to invoicing and record these transactions using a cash register software or system, use software or a system meeting conditions of inalterability, of inalterability, security, conservation and archiving of data with a view to control by the tax authorities, as attested by a certificate issued by an accredited body under the conditions laid down in article L 433-4 of the French Consumer Code, or by an individual certificate from the publisher, in compliance with a model set by the authorities.

Failure by a person liable for VAT to provide proof (by producing the attestation or certificate provided for in article 286-I-3° bis of the CGI) that the cash register software or systems in their possession meet the conditions of inalterability, security, conservation and archiving of data set out in the same provisions is punishable by a fine of €7,500 per accounting or management software or cash register system concerned.

Publishers of secure cash register software and systems can no longer provide individual attestations as a means of validation, but must systematically attest with a certificate issued by an accredited body**.**

11- Modification of the definition of comagny passenger cars

As of January 1, 2025, company passenger cars (subject to the French tax on passenger cars) include :

- among cars classified in category "M1", those that are not special-purpose vehicles and those that are wheelchair-accessible among vehicles in category "N1",
- those with "van" bodywork which have, or are likely to have after easy handling, at least 2 rows of seats, and which are assigned to the transport of passengers from category "N1" vehicles,
- those with "pick-up truck" bodywork and at least 5 seats (subject to article D 421-2 of the CIBS)

Please do not hesitate to contact us should you have any further questions on these subjects.

Yours sincerely

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