



LEGALESE: DEATH & TAXES

with resident lawyer and notary Michael Bula



What is the 3 per cent real property tax often discussed when companies own French property?

Irrespective of whether an artificial legal person [company] earns any rental or other income, if it owns real property in France either directly or indirectly, it must pay a 3 per cent tax on the market value of the property as at 1 January of each year [article 990D of the CGI[1]].

Legal entities liable to the 3 per cent tax must file a return at the latest by 15 May of each year stating the place, composition and market value of taxable real properties and real property rights owned at 1 January of the year of taxation. The return must be accompanied by payment of the tax.

There are two measures by which exemption from this tax can occur [article 990E of the CGI] where the taxpayer:

- Declares by disclosure each year the full identity of shareholders to the French tax administration; or
- Undertakes to do so in writing to the French tax administration as soon as possible after settlement of the purchase of the real property, to disclose to the tax administration, if it requests, the full identity of shareholders.

This applies as much to French companies as to foreign [Australian] companies and can be a time bomb waiting to go off upon the sale of the real property in question, if not dealt with from the outset by a tax agent and can cause the quarantine/freeze of sale proceeds to cover the tax amongst other penalties.

What can I expect in terms of current death duties in France if I buy real estate?

The following rebates apply for Death Duties:

- Spouse or de facto PACS [pacte civil de solidarité] partner or brothers and sisters living under the same roof subject to certain conditions – for a date of death after 22 August 2007 full exemption applies.
- A beneficiary in direct vertical lineal bloodline [child, parent, grandparent] – for a date of death after 17 August 2012 benefits from a rebate of €100,000.
- Brother or sister of the deceased where a date of death is after 22 August 2007 – full exemption if the sibling was at the date of death a bachelor or spinster, widower or widow, divorced or separated, of 50 years of age or more or handicapped/infirm or resided continuously with the deceased for the five years immediately preceding the date of death. In any other case, the rebate is €15,932 for a date of death after 1 January 2011.
- Nephews and nieces where the date of death is after 1 January 2011 – a rebate of €7,967.

- Handicapped beneficiary for a date of death after 1 January 2011 – the rebate is €159,325.
- In all other cases for a date of death after 1 January 2011 – the rebate is €1,594.
- Other rebates apply with respect to the principal residence of the deceased [20 per cent] and previous gifts made at least 15 years before the date of death are diminished according.

After any applicable rebate, Death Duty is calculated on tranches based on the value of the estate share beginning at 5 per cent up to 45 per cent for lineal descendants [see 2, above] and 35 per cent to 45 per cent between brothers and sisters [see 3, above] and for unrelated beneficiaries to the deceased between 55 per cent and 60 per cent – see table:

Succession in direct line

TAXABLE AMOUNT AFTER ALLOWANCES APPLICABLE RATES	ASSESSMENT SCALE
Below €8,072	5%
From €8,072 to €12,109	10%
From €12,109 to €15,932	15%
From €15,932 to €552,324	20%
From €552,324 to €902,838	30%
From €902,838 to €1,805,677	40%
Above €1,805,677	45%

Succession in favour of brothers and sisters

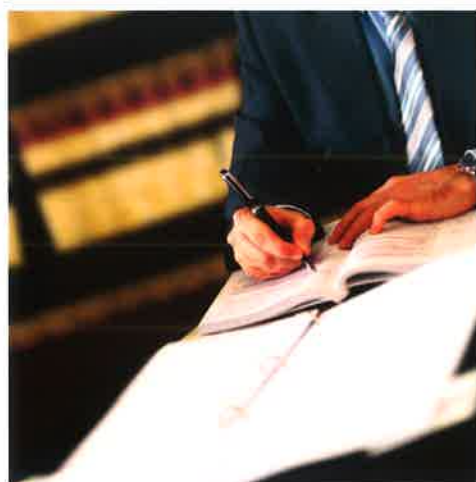
TAXABLE AMOUNT AFTER ALLOWANCES APPLICABLE RATES	ASSESSMENT SCALE
Below €24,430	35%
Above €24,430	45%

Succession in favour of other beneficiaries

TAXABLE AMOUNT AFTER ALLOWANCES APPLICABLE RATES	ASSESSMENT SCALE
Relatives to the fourth degree of relation (inclusive)	55%
Relatives beyond the fourth degree of relationship and between non-related persons	60%

Further rebates may apply for 3 or more children in certain successions by inheritance from a parent or uncle; 50 years of age; special marital status [never married, widow/er, divorced or separated etc.]. ^{FL}

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