Noé Barkate

Avocat Fiscaliste

Structuring income and wealth – Practical Information

- Rental incomes - a few points of comparison to help you choose the tax system best suited to your situation:

	Land incomes ("revenus fonciers")	Non-professional furnished rental ("LMNP")	Professional furnished rental ("LMP")
Conditions	Unfurnished rental	Furnished rental Gross rental income of <u>less than</u> €23,000/year and/or the tax resident other earned income	Furnished rental Gross rental income in <u>excess of</u> €23,000/year AND the tax resident other earned income
Income tax system - Main differences	- lump sum for expenses or actual costs - Work: deductible expenses - Building: non-depreciable - Deficit attributable to property income and overall income (up to €10,700/year)	- lump sum for expenses or actual costs - Work: depreciable - Building: depreciable - Deficit attributable to rental income only	- lump sum for expenses or actual costs - Work: depreciable - Building: depreciable - Deficit attributable to overall income - Social security contributions applicable
Taxation in case of sales	Real estate capital gains for individuals (allowances for holding period) Certain expenses deducted from property income cannot be deducted when calculating future capital gains	Real estate capital gains for individuals (allowances for holding period) Depreciation is not reinstated when calculating the capital gain on transfer	Business capital gains system (no allowances) Reinstatement of depreciation in the calculation of the capital gain on transfer Income tax exemption schemes
Conclusion: Determining the most optimal tax system will depend on accurate simulations incorporating all these parameters as well as the taxpayer's plans.			

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❖ What are the wealth tax (IFI) capping rules?

Principle: Reduction of the amount of the IFI in proportion to the total tax burden in France and abroad of the taxpayer in **excess of 75% of the worldwide income** of his/her tax household.	
Taxes taken into account	- Income tax; - Social taxes; - Wealth tax.
Income taken into account	- Business income net of professional expenses; - Capital gains on transfer, regardless of the thresholds, exemptions, reductions and allowances provided for by the French tax code; - Income from securities net of expenses, regardless of allowance; - Income exempt from income tax (*Livret A*, *PEL*, etc.).
Warning: Specific anti-abuse clause (Concerning, in particular, family holdings companies)	Any income accumulated within a company subject to corporation tax under the control of the taxpayer and that enables him to finance his lifestyle is also taken into account. However, the taxpayer can demonstrate that the company is an asset management company whose purpose is to facilitate the organisation or transfer of assets and that it is acting within the scope of its corporate purpose.
Conclusion: The taxpayer's situation will have to be assessed by taking into account, on the one hand, the net gain linked to the reduction in the IFI and, on the other hand, the correlative loss of cash flow, while ensuring that the application of anti-abuse rules is excluded.	

❖ What are the accounting and tax formalities relating to holding a real estate asset through a French real estate company ("SCI")?

	Tax formalities	Accounting and social formalities
Upon incorporation	- first tax return (no. 2071) the following year; - Undertaking by shareholders to pay the 3% tax (if applicable)	- opening of accounts; - declaration of beneficial owners; - publication of a legal notice; - form M0; - registration with the commercial court registry.
Throughout its existence	- annual tax return (no. 2071); - wealth tax return including the real estate assets held through the SCI;	- registration of any amendment to the articles of association at the commercial court registry; - preparation of annual balance sheets and income statements; - annual approval of the accounts;

- I would like to buy a property in France, a few questions to ask myself:

Step 1 – Clarify the projects	Acquisition to **resell the property**	Acquisition to **enjoy the property**	Acquisition to **operate the property**	Acquisition to **transfer the property**
Step 2 - Anticipate the civil and tax consequences, in particular:	Taxation system of the sale: property traders, private or professional real estate capital gains?	Impact on tax residence? Benefit in kind taxable? Main residence?	Professional or non-professional rental activity, furnished or unfurnished?	Transfer during the lifetime or following a death? Direct transfer or via a company? Full ownership or joint ownership?
Conclusion: only a tailor-made tax and wealth analysis taking into account your specific requirements and each of their legal and tax implications will make it possible to determine and implement the most appropriate structure over time.				

- How does the 3% tax apply?

Who is it attributable to?	French or foreign legal entities (civil companies, joint stock companies, trusts, *fiducies*, foundations partnerships, etc.) that directly or indirectly own properties located in France.
What is the tax base?	Market value of real estate held on January 1st.
Which entities in particular are exempt?	- entities with no prominence of real estate assets; - certain entities whose securities are traded on a regulated market; - entities located in France, in the EU, or in a country that has concluded certain tax treaty provisions with France: ▪ whose rights in real estate located in France are less than €100,000 or 5% of the value of the real estate; OR ▪ who report certain information to the tax authorities each year or undertake to do so (Cerfa 2072 or 2746).
How do you declare and pay this tax?	Online using form no. 2746 before May 15th each year.

❖ Specific tax aspects of the sale of French real estate by a non-resident:

Taxation under the real estate capital gains tax regime for private individuals:	
Assets concerned	- Real estate located in France; - Shares in French companies with a real estate prominence.
Specific exemptions applicable	- exemption for the sale of an accommodation located in France, capped at €150,000 of net taxable capital gains; - exemption for the sale of the former main residence located in France.
Tax rates (after allowance for holding period)	- income tax: 19% And - social security contributions: ▪ 17.2% Or ▪ 7.5% (solidarity levy): persons covered by another European health insurance system.
Application of the tax treaty (if applicable)	- to confirm the place of the tax residence; - to allocate the right to tax between the different States in order to avoid any double taxation on the capital gains.

❖ How can you optimise a transmission of assets by changing the distribution of company reserves between the life interest owner and the bare owner of company rights?

Principle	Company reserves, which constitute an increase in the company's corporate assets, come down as such to the life interest owner (“usufruitier”) in the form of a quasi-usufruct (allowing it to dispose of it freely). A quasi-usufruct debt will be deductible from his estate.
Possible exemptions	Possibility of allocating all company reserves to the bare owner under the statutes of the company.
Precautions to avoid a taxable “indirect” gift:	- Partial and/or temporary allocation of reserves to the bare owner; - Separate deeds of amendment of the articles of the company and attribution, spaced out over time; - The life interest owner retains the power to decide on distributions.
Conclusion	Allocating the reserves of a family company to the bare-owner children can be an effective way of transferring assets.

- How should the statutes of a family non-trading company whose shares are split up be drafted in order to optimise the transfer?

A few clauses to anticipate:	Possible strategies: life interest owners' parents / bare-owner children
Defining the corporate purpose	Acquisition/management/disposal of one or more designated or undesignated financial/real estate assets.
Distribution of voting rights	The life interest owner parent may be granted almost all voting rights, giving him/her a right of veto.
Distribution of financial rights	The life interest owner parent may be granted rights to the company's profits and/or reserves.
Powers of the Managing Partners	Possible disposition of irrevocable management by the life interest owner parent with the most extensive powers; Possible transfer of the management of the company by death (e.g. to the surviving spouse).
Transfer of shares	Free transfers for valuable consideration or stipulation of approval clauses, pre-emption rights between shareholders, etc.
Conclusion	- A civil company makes it possible to **separate management from property**. - The ideal structure for **transferring** financial or property assets gradually; - Parents can retain the **power of** management for the rest of their lives; - While this may reduce the **taxation on death**, the tax on the capital gains/income generated by the civil company should not be overlooked.