

Investing in French Real Estate through a Mauritian Company

1. General Rule

French tax authorities cannot easily ascertain the identity of the shareholders of foreign companies owning real estate in France, especially if these companies are based in countries where the identity of beneficial owners are kept confidential. They suspect that these beneficial owners may sometimes be French residents, who are unwilling to pay taxes such as income tax, capital gains tax, tax on wealth and tax on transfer of ownership.

In order to rebut this presumption of tax evasion, an annual tax of three percent (3%) is levied on the market value of the French real estate held by foreign companies. However, following certain criticisms on discriminations based on nationality and following a decision on this issue by the French “Cour de Cassation”, this tax now applies to both French and foreign companies.

This tax of three percent (3%) is levied on French immovable property, whether building, land or the real rights attached thereto and held in the name of a legal entity. No distinction is made whether the immovable property is for personal or commercial use, its geographical location or whether it is rented or otherwise.

This tax is due on any immovable property or right to immovable property as of January 1st of any fiscal year. It is imposed on the person holding of the property or rights, either directly or through one or more legal entities (Article 990D of the “Code général des impôts”). As a result, a legal entity holding immovable property or rights thereto after January 1st of a particular year and no longer holding such on January 1st of the next year will not have to pay the tax or make any declaration.

The tax of three percent (3%) is calculated on the market value of the property or rights at the relevant date. It concerns any legal entity which has a separate legal personality from that of its members, shareholders or partners.

Thus, for example, the “Anstalten” and the “Stiftungen” of the Liechtenstein must be considered to have distinct legal personalities.

2. Exemptions

A. Exemptions for French and Foreign Entities

The following entities will be exempt from the three percent (3%) tax:

1. Any legal entity owning immovable property of a market value less than fifty percent (50%) of the market value of its total French assets;
2. Any company listed on the stock exchange;
3. International organisations, foreign states and government institutions; and
4. Pension funds and non-profitable organizations.

B. Specific Exemptions for Foreign Entities

Foreign entities are exempted from the three percent (3%) tax, subject to the following declarations:

1. Legal entities located in a country or a territory with which France has signed a double taxation agreement (DTA) covering administrative assistance against tax evasion and fraud will be exempted if they submit each year to the French tax authorities before May 16th, the following information (declaration form no. 2746):
 - the address and market value of any immovable property held by them in France, either directly or through one or more legal entities, as at January 1st;
 - the identity and addresses of their shareholders, members or partners; and
 - the number of shares or interests held by each one of them.
2. Similarly, legal entities which have their head offices in France or which, according to a DTA, are entitled to the same (non-discriminatory) treatment as French companies if:
 - they either disclose to the French tax authorities the information as aforesaid; or
 - they commit to disclose such information to the tax authorities, upon request. In addition to the above, these legal entities will also have to engage to provide the French tax authorities, upon request, proof of fiscal residence of their shareholders, members or partners. There is no requirement as to the form of such engagement. This will be made under solemn affirmation and signed by an authorised representative of the legal entity.
3. Legal entities which have the choice between the two possibilities mentioned above, conformably with the provisions of Article 990E of the “Code général des impôts”.

3. Use of a Mauritian Company

A. General Rule

The DTA in force between France and Mauritius contains both a clause providing administrative assistance and a non-discriminatory clause. A Mauritius resident entity owning French real estate can thus avoid the tax of three percent (3%) and choose between the following:

- disclosing the identity of its shareholders, members or partners to the French tax authorities; or
- committing itself to transmit such information at the request of said authorities.

However, the Mauritian structure does not help to avoid the three percent tax, if there would be a refusal to disclose the identity of the shareholders, members or partners in the case of a formal request from the French authorities.

B. Choice of the Entity

French real estate can be held through a Category 1 Global Business Licence company (GBL1) incorporated in Mauritius. It will then apply for tax residency in Mauritius and benefit from the DTA between France and Mauritius.

In addition, further protection and confidentiality could be achieved by having a trust in Mauritius to own the shares of the GBL1 owning the French real estate. Trust law acknowledges the trustee as being the legal owner of the assets of the trust.

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