



**NON RESIDENT AND TAX ON FRENCH REAL ESTATE WEALTH**  
**[A new law to pierce the corporate veil](#)**

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1st general comments

The article 31 of the Law of finance for 2018 N°2017-1837 of 30 December 2017 has eliminated the taxation of wealth for all productive or non-productive assets EXCEPT for all real estate what ever the form of ownership except if used for professional purposes

**[IMPÔT SUR LA FORTUNE IMMOBILIÈRE\( CGI\)](#)**<sup>pdf</sup>

This new tax called estate wealth tax targets non-residents who own property in France owned either directly or indirectly by foreign entities

Note from P Michaud we believe that this text is not final in particular that it taxes the civilian rental investments - source of stability for tenants and work for the construction industry - and that it exempts the furnished rental source of competition against the tourism industry. Let's wait for the continuation and the end of this billiard with 5 bands..

The devil is well in the details

In fact, the new rules oblige interposed property owners in France to disclose the identities of natural persons - residents or non-owners of buildings indirectly.

*II. - A decree lays down the detailed rules for the application of the I, in particular the declarative obligations incumbent upon the taxable persons and the companies or organisms referred to. Article. 982. - I. - 1.CGI new)*

**Delaware companies are on the front line, but they are not the only ones!!!!**

**[La LLC du DELAWARE : Danger fiscal par CAA Nancy 16/11/17](#)**

**[Cacher l'identité d'un prêteur est abusif \(CAA NANTES 25/06/15\)](#)**

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This new obligation of fiscal transparency - the breach of which is not yet sanctioned contrary to what is provided for in the framework [of the Tax on the fair value of the buildings of the legal entities \(BOFIP\)](#) - which will not fail to return in practice with international assistance incorporated in OECD and FATF recommendations

**[A new law to pierce the corporate veil](#)**

**[La définition du bénéficiaire effectif par l'OCDE](#)**



## Transparency and beneficial ownership of legal persons and legal arrangements

24 -Transparency and beneficial owners of legal persons

25 -Transparency and beneficial ownership of legal constructions

The term beneficial owner means the natural person (s) who ultimately owns or controls a client and / or the individual on whose behalf an operation is carried out. Also included are persons who ultimately exercise effective control over a legal person or legal construction

## TRACFIN's position on property monitoring

Our legislator therefore wants to go further than "the imposition sanction" of 3% of anonymity by seeking the precise identity of true non-resident owners but also residents of course!

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## **WHO IS IMPOSED?**

The non-resident who owns directly or indirectly real estate in France whose net value after deduction of certain debts is greater than 1.300.000 €

## **TAXABLE PROPERTY TRANSFERRED IN A FIDUCIARY AGREEMENT**

Assets transferred in a fiduciary agreement are included in the patrimony of the settlor for their net market value

## **TAXABLE PROPERTY IN A TRUST**

Assets placed in a trust are included, for their net market value on January 1 of the tax year, as the case may be, in the patrimony of the settlor or in that of the beneficiary who is deemed to be a settlor (CGI Art 792 -0 bis, II.3 and 970).

Excluded from the IFI are products that are capitalized there.

## **WHAT IS THE TAXABLE PROPERTY?**

The new article 965 of the CGI states that

The property tax base is constituted by the net value on January 1 of the year:

1 ° Of all property and property rights

2 ° Units or shares of companies and organizations established in France or outside France, for the fraction of their value representing real estate assets or rights held directly or indirectly by the company or body.

NEW Taxation is thus no longer limited to the securities of companies with a predominance of real estate. It applies, in effect, to all securities of companies, whether listed or not. The social form (SCI, SA, SAS, SARL, etc.), the tax regime (partnerships or companies subject to the tax) and the place of establishment (in France or abroad) of the issuing company are irrelevant. Taxation also affects rights held in undertakings for collective investment (SICAV, FCP, REIT, Sppicav, for example

Before January 1, 2018 article 885 L of the CGI provided that natural persons who do not have their fiscal domicile in France are not taxable on their financial investments. But added Are not considered financial investments

(a) The shares or units held by such persons in a corporation or legal person whose assets consist principally of immovables or immovable rights situated in French territory, in proportion to the value of such property in relation to the total assets of the company.

(b) The shares, units or rights held by such persons in the legal persons or family organizations referred to in the second paragraph of paragraph 2 of section 750 ter.

This protective article has been repealed since January 1, 2018

The new text is broader than the one previously which imposed the shares of companies with predominance of real estate and not directly the buildings.

The new law creates fiscal transparency between the owner of the shares and the property located in France and belonging to a legal entity

## **NEW DECLARATIVE OBLIGATIONS FOR ORGANIZATIONS INTERPOSED**

The law (article 978 V CGI) provides that the declarative obligations incumbent on the taxpayer and the companies or organizations that are the owners - direct or indirect - of immovable property in France are determined by decree.

The law provides (Article 965 CGI) that companies and bodies - notably trust- foreigners holding real estate in France will be subject to specific declarations to reveal to the tax authorities the identity of real taxable owners in France.

The declarative obligations incumbent upon the taxable persons and the companies or organizations are determined by decree.

## **APPLICATION OF TAX CONVENTIONS**

As in the context of the ISF, these taxation rules for non-residents who dispose of real estate in France may be attenuated by international conventions, insofar as these agreements expressly refer to taxes on wealth or contain provisions sufficient to determine the methods of taxing wealth.

[List of tax treaties concluded by France  
\(effective January 1, 2017\)](#)

The conventions applicable to the wealth tax or, failing that, the income tax must be taken into consideration in order to solve the problems relating to the definition of tax domicile. Indeed, in relations with States bound to France by an agreement, taxpayers' fiscal domicile with respect to the wealth tax must be assessed, in the absence of any provision applicable to such tax, in accordance with the rules laid down in income tax.

On the other hand, problems independent of the definition of the tax domicile are only resolved by reference to the agreements if they are expressly aimed at wealth tax or if the agreements contain sufficient provisions to determine the methods of taxation of the assets. .

As far as corporate securities are concerned, non-residents will often be able to avoid the IFI, as most agreements grant the right to tax France only for the securities of companies whose assets are principally consisting of real estate located in France.

In addition, some agreements expressly provide for the application of the property tax system, while other agreements envisage the application of the regime for personal property. On the other hand, non-resident investors who can not avail themselves of the benefit of an agreement (in the case of residents of Belgium, Portugal or the United Kingdom, for example, the agreement does not cover the wealth tax) may in some cases be more heavily taxed at the IFI than they were at the ISF

### **Furnished rented living quarters**

"Professional" furnished rental companies are exempt from the IFI. Rented leased or rented furnished rental premises are considered as professional property if their owner (CGI article 975, I;

-from more than € 23,000 in annual income and more than 50% of the professional income of the tax household under the categories of salaries and wages, industrial and commercial profits, agricultural profits, non-commercial benefits, income of the managers and partners mentioned in Article 62 of the CGI;

and carries out its main activity and is registered in the Trade and Companies Register in that capacity.

### **Exoneration of buildings allocated to an operational activity**

Are not retained for the calculation of the real estate tax:

-Property and immovable rights held by the individual or liberal operator and assigned to his professional activity, subject to the fulfillment of certain conditions (device very close to the regime of exemption of professional property with regard to EWB);

-Property and immovable rights held by the directors of companies subject to corporation tax, held directly or indirectly, subject to the respect of certain conditions very close to the regime of exemption of professional property with respect to wealth tax;

The fraction of the value of the securities of companies representing property and real estate rights assigned by the owner company to its own operational activity;

The fraction of the value of securities of operating companies representing real estate property and rights assigned to the operation of the said companies or other operating companies of the group.

#### **-Property used in the business of a partnership**

Real estate property rights and shares or shares representing these properties or rights are exempt if (CGI article 975, II):

-property and property rights are assigned to the industrial, commercial, artisanal, agricultural or liberal activity of a partnership subject to income tax (CGI Articles 8 and 8 ter);  
-and the taxpayer (or a member of his IFI tax household) has his main activity in the company.

Property or property rights assigned to these companies are exempt to the extent of the participation of the taxpayer in them.

## Multiple activities

Assets or rights allocated to the industrial, commercial, artisanal, agricultural or liberal activities of several partnerships are exempt when the corporations have similar, related and complementary activities. The concept of principal activity would then be assessed in relation to all the aforementioned companies.

Property allocated to the business of a corporation subject to the SI

## Conditions of exemption

As with the exemption of professional property from the ISF, real estate assets and rights and shares or shares representing these assets or rights are exempt under certain conditions (CGI Art 975, III):

### Exemption of rural property

## LIMITATION OF DEDUCTIBLE DEBTS

Exclusion of certain family debts

In principle, are not deductible:

- Loans contracted directly or indirectly through one or more companies or bodies interposed with the taxpayer or a member of his tax household (CGI Art 974, III-1 °);
- Loans contracted directly or indirectly through one or more companies or interposed organizations from a member of the taxpayer's family group (other than a member of the tax household) (CGI Art 974, III -2 °);
- the loans contracted by the taxpayer or a member of his tax home to a controlled company (CGI article 974, III-3 °).

However, the law provides **some exceptions** to the first two exclusions

### Deduction ceiling for large patrimonies

When the market value of the taxable assets exceeds 5 million euros and the amount of the debts exceeds 60% of this value, the portion of the debts exceeding this limit is only deductible by 50% of this excess.

Taxable wealth refers to all taxable real estate, including securities of corporations

This ceiling of deduction does not apply - the debts are therefore fully deductible - if the taxpayer justifies that the debts were not contracted for a mainly tax purpose.

Example A taxpayer owns taxable immovable property with a gross value of € 8 million, he has contracted debts for their acquisition of € 5 million, representing more than 60% of the value of the assets (4, € 8 million). The excess of € 200,000 is only deductible at 50%, ie € 100,000. The amount of the deductible debts is then limited to € 4.9 million.

## LOAN IN FINE

In the same way the law has provided for special conditions in the event of loan in fine

## RATE

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Fraction de la valeur nette taxable du patrimoine	Tarif applicable
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	(en pourcentage)
N'excédant pas 800 000 €	0
Supérieure à 800 000 € et inférieure ou égale à 1 300 000 €	0,50
Supérieure à 1 300 000 € et inférieure ou égale à 2 570 000 €	0,70
Supérieure à 2 570 000 € et inférieure ou égale à 5 000 000 €	1
Supérieure à 5 000 000 € et inférieure ou égale à 10 000 000 €	1,25
Supérieure à 10 000 000 €	1,50

**Simplified reporting requirements and IFI payment  
The specific declaration for the ISF is deleted.**

The taxpayers will mention the gross value and the taxable net value of the taxable assets on the annual income tax return 2042 (CGI art.170), regardless of the amount of their net taxable wealth at the IFI if it exceeds € 1.3 million.

For IFI 2018, the value of the taxable wealth is mentioned on the 2017 income tax return.

In support of this declaration are annexed, in accordance with a model drawn up by the administration, on which the taxpayers mention and evaluate the elements of their taxable wealth.

The declarative obligations incumbent upon the taxable persons and the companies or organizations are determined by decree.