



Tax Talk 2012 ©

French Tax News

The year ended with a shocker. The 2011 French Amended Finance Bill has set out surprising new rules for the taxation of trusts...

Income Tax rate

There will be no changes in the tax bands used for the calculation of the 2011 income tax for French tax residents (same flat rate of 20% applying to non French residents):

- Up to €5,963 : 0%
- €5,964 to €11,896 : 5.5%
- €11,897 to €26,420 : 14%
- €26,421 to €70,830 : 30%
- Over €70,830 : 41%

Social Charges rate

From Oct. 1st 2011, French social charges have increased from 12.3% to **13.5%**. Please note that non residents are not subject to social charges.

New assessment of the Capital Gains Tax from Feb. 1st 2012

Under the current law, the sale of French secondary residences as real estate is totally exempt from Capital Gains Tax after 15 years of ownership. Under the new law the gain will be totally exempt from tax after 30 years of ownership. The new Capital Gains Tax will be applied to sales completed as of 1st February 2012.

Allowances

A summary of the new allowances is as follows:

- The fixed allowance of €1,000 disappeared on Sept. 19th 2011.
- No allowance for the first 5 years of ownership.
- Between 6 and 17 years of ownership: 2% allowance per year.
- Between 18 and 24 years of ownership: 4% allowance per year.
- Between 25 and 30 years of ownership: 8% allowance per year.

Until 1st January 2011, the rate of Capital Gains Tax has been fixed at 19 % + social charges at 13.5%, for a French tax resident.

Non French tax residents are not subject to the social charges, but they are subject to French Capital Gains Tax at different rates depending on where they are resident:

- 19 % if they are resident in an EU Country or Iceland, Norway and Liechtenstein.
- 33.33 % if they are resident in a country other than those above mentioned.
- 50% if they are resident in a country considered by France as an “uncooperative State”

New calculation of the Wealth Tax for 2012

Only people with a net taxable asset superior to **1.3 million euro** will have the obligation to submit a 2012 wealth tax declaration and pay the 2012 wealth tax.

Only 2 tax bands will be used to assess the wealth tax:

- A net taxable asset on Jan. 1st 2012 estimated between 1.3 and 3 million euro will be taxed at a fixed rate of 0.25% on its whole (no allowance)
- A net taxable asset on Jan. 1st 2012 estimated to more than 3 million euro will be taxed at a fixed rate of 0.50% on its whole.

In both cases, tax will be payable from the first euro.

For wealth between EUR 1.3 million and EUR 3 million, taxpayers will no longer file a separate return but will use their income tax returns.

Shareholders’ loans held by non French Tax resident in French foreign companies

The Finance Bill also threatens higher taxes for non French tax resident owners of properties in France who have previously avoided paying wealth tax by buying the property through French or foreign companies (such as an SCI) – a company structure to which the shareholders’ advanced loans, in order to reduce its taxable value.

As from 1st January 2012, shareholders’ loans held by non French tax resident shareholders in French or foreign companies owning French real estate will no longer be taken into account to reduce the value when assessing the value of the shares in the company for Wealth Tax (“ISF”) purposes.

Shareholders’ loans held by non French-Tax residents will no longer be considered qualifying debts of the Company for Wealth Tax purposes. Currently, shareholder’s loans held by a non French-tax resident are deductible when calculating the value of the company’s shares for French Inheritance Tax purposes.

Registration of the sale of shares of real estate companies abroad

As of 1st November 2011 the sale of shares of companies holding real estate in France must be formally notarized in France, even if the sale takes place abroad. This notarization will trigger a 5 % real estate transfer tax (“droit d’enregistrement”).

New tax treatment of Trusts in France

The 2011 French Amended Finance Bill has set out new rules for the taxation of trusts. To summarize the main changes, income retained within a trust is not taxed until distributed to a beneficiary, a new disclosure regime is introduced for trustees who hold French assets or if the settlor or any beneficiary is a French resident, and wealth tax is extended to trusts if the settlor or beneficiaries do not declare the same.

As from January 1st, 2012 and to the extent that:

- The settlor is a French tax resident,
- One of the beneficiaries is a French tax resident, or
- The trust fund includes French taxable assets,

the trustee will have to disclose to the French tax authorities information regarding the Trust, such as:

- The creation, modification, revocation and terms of the trust.
- The net asset value of the trust as of January 1st of each year.

If the required information is not disclosed to French tax authorities, a penalty of 5% (or EUR 10,000) will be charged. The trustee will be jointly liable with the settlor and beneficiaries for the payments of the said penalty.

Trust and estates will be seriously affected by the new regime with regard to gift and inheritance tax depending on the type of transfer and whether it can be classified as a gift or a succession or some other transfer as well as the relationship between the settlor and the beneficiaries.