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SOLICITORS & FRENCH LAW SPECIALISTS

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LEGAL

## Capital Gains Tax - Sale of a French Property

Capital Gains Tax may be payable if you sell a French property which is not your main residence or if you sell a second home which you have not yet owned for thirty full years.

It is not possible to nominate the French property as your main residence, this is a question of fact not a choice. However, in specific circumstances, the main residence exemption may still apply if the French property was your main residence but you moved out shortly before the sale.

If neither of the above exemptions applies the following information may be useful.

### Have I Made a Gain?

If you have owned the property for more than five years and the sale price is less than 122.5% of the purchase price there is no capital gain. Neither is there a capital gain if you have not owned the property for this long but the sale price is less than 107.5% of the purchase price.

This is because the purchase price is deemed to include the Notaire's fees (including taxes) which can be assumed to be 7.5% unless you have proof that the fees were in fact higher.

After five years of ownership a further 15% of the purchase price can also be added to allow for works carried out. This is the case whether or not you have undertaken any major works.

If you have carried out major works at the property (which represent more than 15% of the purchase price), you will be required to provide written **estimates, invoices and proof of payments** of the said invoices without which the automatic 15% figure will apply (after five years). Major works include construction or extension but not decoration. All work will need to have been carried out by French registered construction companies.

### Appoint a Fiscal Agent

Applicable when the sale price is greater than 150,000 € regardless of whether or not a gain has been made.

If you are UK resident (or other non EU Resident), you will need to appoint a fiscal agent (Représentant fiscal) to prepare and lodge the CGT declaration on your behalf as a result of the UK no longer being part of the EEA.

The fiscal representative's fee will be payable by you.

Quotes will be requested from the fiscal representative by us and/or the Notaire dealing with the sale. The fee may be higher where the fiscal representative will study invoices to verify that they meet the above criteria.

### Taper relief

After 22 years of ownership the Capital Gains Tax element of the liability is removed, a percentage reduction applies for each full year of ownership after the first five years:

- 0% for the first five years of ownership
- 6% every year of ownership between 6 and 21 years (up to 96%)
- 4% for the 22nd year of ownership



Taper relief also applies to the social charges element but over a thirty year period:

**0%** for the first five years of ownership.

**1.65%** every year of ownership between 6 and 21 years (up to 26.4%)

**1.6%** for the 22nd year (up to 28%)

**9%** for every year between the 23rd and 30th years (37% to 100%)

### Gain in excess of 50,000 Euros

A supplementary tax is also payable where the **gain** exceeds 50,000 Euros.

#### Proof of Affiliation to UK Social Security (National Insurance)

You will be required to provide the fiscal agent with:

##### For sellers who are still working (employed or self-employed)

- Proof that you are affiliated to the UK National Insurance system for the year in which the sale takes place (a P60 should be acceptable but you may be asked to provide a certificate from HMRC instead, particularly if you are self employed).

##### For sellers who are retired

- Letter or attestation from HMRC confirming that even if you have not paid National Insurance in the UK for the tax year [tbc – year of sale], you are still insured within the UK Scheme.

**If you can provide this proof, you will only be required to contribute to social charges in France at the reduced rate of 7.5% (instead of 17.2%).**

This certificate is nominative and therefore, each seller must request it.

Please note that it can take some time to obtain the required document from HMRC. Therefore, you may choose to contact them as early as possible once you have found a buyer.

If at the time of completion you have not been able to provide the relevant document from HMRC, **a retention of the sale price will be made into the Notaire's account pending receipt of the documents.** The retention is likely be the difference between the social charge contribution calculated at 17.2% and at 7.5%.

### UK CGT and the Double tax treaty

UK tax residents are also required to declare the sale of their French property to HMRC, UK CGT rules will then be applied to determine if CGT is payable in the UK. The double taxation treaty between the UK and France means you will not pay the same tax twice but you will pay the full amount of the higher rate in total.

### What to do next?

To discuss how we can help you, please contact us

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