



# ARTICLE

## REAL ESTATE WEALTH TAX (IFI): A NEW REALITY FOR NON-RESIDENTS?



Private Clients Tax Law Private Equity | 17/04/18 | Xavier Rohmer Clara Ferrari

The new real estate wealth tax (IFI), which replaces the wealth tax (ISF) will be applicable for the first time in 2018 for residents and non-residents who own net real estate assets above €1.3 million as of January 1, 2018.

For non-residents, they must declare the IFI for the first time by May 17, 2018, for a paper declaration, or by May 22, 2018, for an Internet declaration.

The re-centering of the IFI on real estate assets does not make everyone happy. Indeed, given the definition of real estate assets subject to the IFI, certain non-residents who did not owe the ISF may now owe it as of January 1, 2018.

For the first IFI declaration to be made in May 2018, non-residents must analyze in detail the composition of their real estate assets located in France to verify the impact of the IFI's enactment.

As a reminder, subject to the international tax treaties concluded with France, non-resident natural persons were subject to the ISF only on their real estate located in France, excluding their financial investments. It follows that non-residents were subject to the ISF if they had:

- real estate and real property rights located in France;
- personal property located in France;
- participating interest shares (i.e., subject to contrary proof, shares representing at least 10% of the company's capital subscribed for upon issuance or retained for a period of at least two years);
- shares or units of an unlisted French or foreign predominantly real estate company (i.e., a company whose value in real estate or real estate rights located in France not allocated to its operational activity represents more than 50% of the total value of its corporate assets located in France);
- real estate and real estate rights located in France held through companies of which more than 50% is held by the taxpayer's family group.

As of January 1, 2018, non-residents are subject to the IFI on their real estate and real estate rights located in France held directly or indirectly, meaning:

- (i) real estate and real estate rights located in France; and
- (ii) the units or shares of companies or organizations (established in or outside France), in the amount of the fraction of their value representing real estate and real estate rights located in France held directly or indirectly by the company or organization (the "real estate coefficient").

As regards real estate located in France held by a company, the legislature has provided for application of the IFI to all companies, listed or unlisted, regardless of their tax regime or place of their registered office.

Under the new IFI rules, certain non-residents who were subject to the ISF on their assets located in France other than French real estate assets (e.g., personal property or participating interest shares) will not owe the IFI.

However, the effect of the abandonment of the concepts of "predominantly real estate" and majority shareholding under the IFI and the related application of a real estate coefficient to determine the taxable fraction of indirect real estate holdings is that, in the IFI tax base for non-residents, it includes companies that were not within the ISF's scope because they were not predominantly real estate companies or more than 50% of them were not held by the taxpayer's family group.

Moreover, the units of real estate investment trusts (SCPIs) or real estate collective investment undertakings (OPCIs) composing the units of redeemable life insurance contracts or capitalization contracts (*contrats de capitalisation*) subscribed for by non-residents are taxable at their real estate coefficient.

The result is that non-residents indirectly holding real estate assets in France could be taxed more heavily for the IFI than they were for the ISF because they are now taxed on all of their shareholding at the real estate coefficient.

However, it should be noted that, in the case of indirect holding of the real estate through a company or organization, non-residents may enforce all of the exclusions of the taxable base provided for by the legislature, subject to certain conditions and to anti-abuse clauses. This involves:



- shareholding of less than 10% of the capital and voting rights in operational companies;
- shareholding of less than 10% of the capital or voting rights in companies about which the taxpayer, in good faith, does not have the information necessary to estimate the real estate coefficient;
- real estate or real estate rights allocated to the operational activity of the company that holds them or of a company in the group;
- shareholding of less than 10% of the rights of a collective investment undertaking (OPC) whose assets are composed of less than 20% in taxable real estate or real estate rights;
- shareholding of less than 10% of the rights of an OPC whose assets are composed of less than 20% in taxable real estate or real estate rights; and
- shareholding of less than 5% of the capital and voting rights of real estate investment companies (SICs).

Certain international tax treaties will attenuate the new IFI tax rules for residents of treaty countries, and notably when they limit France's right to tax to only shares in companies whose assets are mainly composed of real estate located in France.

In this respect, one must verify on a case-by-case basis, firstly, whether the tax treaty covers the wealth tax and, secondly, if it applies to an analogous tax that may be created after the treaty's execution (as is the case of the tax treaty with Luxembourg, signed on March 20, 2018, not yet in force). If this is the case, as a general rule, the international tax treaty would be applicable to the IFI and non-residents will have to verify to what extent its provisions allow, or do not allow, France to tax real estate located in France held indirectly through a company. As regards the tax treaty with Luxembourg signed on March 20, 2018, Article 21 allows one not to make real estate held indirectly by Luxembourg residents subject to the IFI.

Residents of countries which do not have treaties with France or residents of countries whose tax treaty concluded with France do not cover the ISF (such as Belgium, Portugal or the United Kingdom) will have to apply the new IFI rules without any attenuation possible.

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