

# « 3% Tax on French Real Estate Assets »: Any inaccuracy in the information provided on the form will result in the payment of the tax

*Cour de cassation, Chambre commerciale, 30 August 2023, n° 21-15.743*

**15 November 2023**

**The importance of providing accurate information in order to qualify for exemption from this tax has once again been highlighted by a Supreme Court decision.**

## Applicable rules

All French and foreign entities that directly or indirectly (regardless of the number of intermediate entities) own French real estate properties or rights, are subject to an annual tax of 3% of the fair market value of these French assets.

Among the many exemptions from this tax, one of the most widely used is the filing of an annual form disclosing the identity of the owners of the rights in the entity.

The purpose of this tax is to enable the tax authorities to identify the ultimate owners and to prevent them from evading taxes such as the wealth tax or inheritance tax that can be due on these real estate assets.

Moreover, the tax authorities have a 3-year period from the year of filing in which they can audit the return. The limitation period is extended to 6 years if the tax liability is insufficiently disclosed in the return (i.e., when the authorities have to carry out further investigations in order to verify the validity of the exemption).

## Facts judged by the court

A Luxembourg-based company acquired a French villa.

The principal shareholder is a company located in the British Virgin Islands. It is owned by an individual who is a resident of Israel for tax purposes.

The Luxembourg company filed 3% real estate returns stating that the shares were held by the Israeli individual.

The tax authorities sent a reassessment proposal to the Luxembourg company requesting the payment of the tax for the previous 6 years.

The Luxembourg company argued that the limitation period was 3 years because the tax returns contained all the necessary information to enable the authorities to verify the validity of the exemption.

## Decision

The Court ruled that the 3-year limitation period was indeed not enforceable on the tax authorities as the filed information on the return mentioned the beneficial owner (the Israeli resident) instead of the actual shareholder named in both the articles of association and in official documents issued by the state in which the legal entity was incorporated (i.e. the BVI company). This discrepancy of information was considered sufficient grounds to over-rule the 3-year limitation period.

The Court thereby confirmed that the 3% real estate tax was indeed due for the previous 6 years.

## Consequence

This decision together with others, confirm once again that tax returns must be carefully and correctly filed with the French tax authorities.

Irrespective of whether the tax returns are filed in time, the tax authorities can still demand payment of this tax for the last 6 years if the information provided in the returns is incorrect or incomplete.

A recent ministerial reply (Masson, n° 4005, 7<sup>th</sup> March, 2023) confirms the strictness of this position: the tax is due even if it is readily amended by the taxpayer after the deadline (the sole advantage is the application of reduced interest for late payment).

Both the tax authorities and judges adopt a strict approach in the application of this exemption and do not accept excuses easily.

Taxpayers must ensure that:

- Annual returns are filed for each entity holding French properties directly or indirectly
- The information included in their returns is accurate
- They can provide supporting evidence to the information provided in the case where an audit is performed.

Our team is on hand to help you review your obligations relating to 3% real estate returns and can ensure that your declaration forms are filed correctly and completely.

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