# MICHELEZ NOTAIRES

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# INVESTING
# IN REAL ESTATE IN FRANCE

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# INVESTING IN REAL ESTATE IN FRANCE

You wish to invest in the French real property market. **This summary guide will answer your preliminary questions.** Drawn up by the team of Michelez Notaires, it describes the process of buying a property, the structuring of the transaction and the various costs (purchase, possession and resale).

## IMPORTANT

**Important Disclamer: This guide is drawn up in conformity with French law and addresses French tax and legal matters only.**
Some solutions proposed in France might not be recognized or may be interpreted differently by the legal system of the investor's country of residence. Also, the tax agreements between France and the investor's country of residence can lead to the application of different rules.
You should obtain the proper services of a legal expert and tax adviser from the investor's home country to verify and validate the transaction, to provide the necessary legal security and to ensure a thorough understanding of the tax and legal consequences of the contract.

The purpose of this guide is to familiarize you with French legislation in this domain and is not exhaustive. Some concepts have been simplified to make the guide as easy to read and understand as possible.

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## WHAT IS A "NOTAIRE"?

**In France, a "notaire" (notary public) is a public official operating in the following fields: real estate, family, inheritance, companies, rural sector, local authorities.**
Appointed by the French Minister of Justice, French notaries confer authenticity on the deeds and instruments that they draw up. The notary officially confirms the intentions expressed by the persons that sign notarized deeds and instruments and assumes personal liability for all the deeds executed in his/her presence and for the advice given.

**Although notaries are vested with public authority, they perform their functions in a free-market context, because they bear economic liability for their practice. Notaries are remunerated by their clients:**

- for certain legal instruments, the fees charged must comply with a national price list established by the State,
- for others, the amounts charged will comply with a fee agreement approved in advance by the client.

## WHO ARE WE?

**Located close to the Arc de Triomphe in Paris, Michelez Notaires assist their non-resident clients in the following areas:**

- **Real estate financing, structuring and transactions,**
- **Transfer of inheritance and estate.**

Since these domains generally require compliance with the tax and legal constraints of the country of residence, Michelez Notaires is continuously developing a number of partnerships with expert professionals in the main European capitals, the USA, Japan and the People's Republic of China.
Our team, which is composed of specialists in property and family law, works in English and German.

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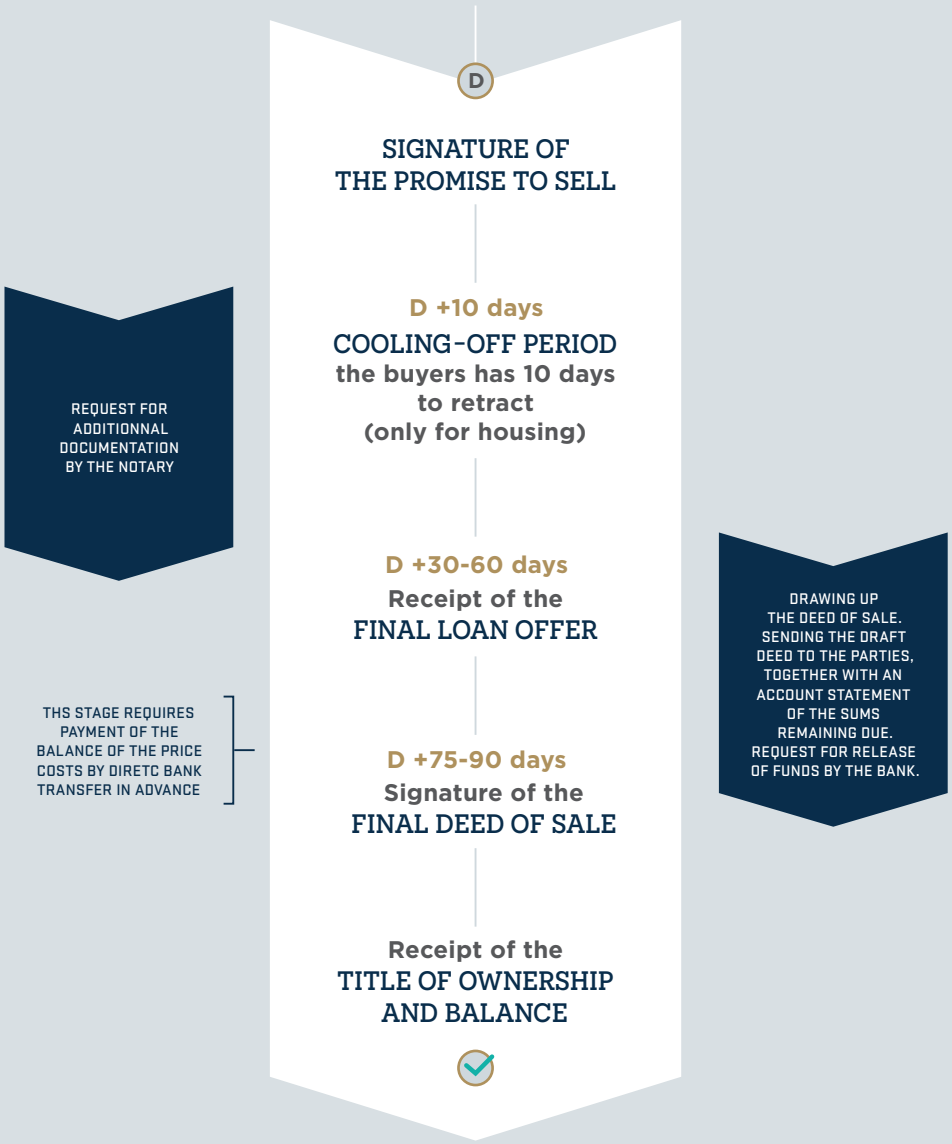
## IN THE CASE OF REAL ESTATE INVESTMENTS IN FRANCE, WE PROVIDE OUR SERVICES IN THE FOLLOWING DOMAINS:

- Financing of investments and obtaining appropriate mortgage funding,
- Acquisition structuring, which can include founding a buyer company,
- Due diligence of property acquired or for sale and, where applicable, establishment of an electronic data room,
- Drafting deeds for the purchase and sale of property,
- Tax and legal advice to assist in structuring the acquisition under optimal conditions,
- Assistance in conducting supplementary technical audits, composing the funding package and drawing up annual tax declarations.

# THE PROCESS OF ACQUISITION IN FRANCE



**The purchase of a property consists of several stages:** looking for a suitable property, obtaining the necessary legal and technical documentation, signature of a preliminary contract or promise to sell ("promesse de vente") and signature of the final deed of sale.




Today, there is no longer any restriction on the citizenship of the investor. All foreign nationals are therefore permitted to invest in France either directly or indirectly.

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## 1. PROPERTY SEARCH

**The property search can consist of going through the advertisements published either by property market professionals (real estate agents) or by private individuals on dedicated websites.** Unlike in other countries such as the United States, the intervention of two professional intermediaries (one for the seller and one for the buyer) is not mandatory, although this practice is tending to increase.

Notaries have access to property price listing databases that we can consult at your request.

Further, if you wish to obtain a more precise value assessment, you can ask a property expert to survey the property and assess its value.

**In some cases, putting a value on certain properties can prove difficult, due to their rarity (high-luxury properties in ideal locations), unique configuration (atypical properties) or their geographical locations (limited basis for comparison).**

DURING THE NEGOTIATION PHASE, IF YOU ARE THE SELLER, WE ADVISE YOU NEVER TO ACCEPT AN OFFER FROM THE BUYER IN WRITING OR EVEN BY E-MAIL, SINCE THIS ACCEPTANCE MAY PROVE TO BE PERMANENTLY BINDING ON YOU WITHOUT BINDING THE BUYER TO THE OFFER.

WE ADVISE YOU TO IMMEDIATELY SIGN THE PRELIMINARY PROVISIONAL SALE CONTRACT (PROMISE TO SELL), WHICH IS DESIGNED TO DEFINE ALL THE CONDITIONS OF SALE.

## 2. DOCUMENTS NECESSARY FOR SIGNATURE OF THE PROMISE TO SELL

**Before the signature of the promise to sell, various documents must be obtained and communicated to the parties.** An audit of these documents (due diligence) would identify any difficulties or risks attached to the property for sale.
The list of documents below is not exhaustive. On reading certain of these documents, other documents or the assistance of third parties may be necessary.
The absence of some of these documents will cause conditions precedent of the preliminary contract requiring them to be obtained before closing.

### TITLE OF OWNERSHIP

This document shows who are the owners of the property and confirms that there is a continuous chain of ownership over a period of 30 years. **This verification is necessary in France and reassure buyers** that their ownership rights would not be challenged.

### IDENTIFICATION OF THE PARTIES

The following documents must be provided by the parties:

**Individual persons**
- Identity documents or passport
- Birth certificate
- Marriage certificate
- Marriage contract (prenuptial agreement)
- Civil partnership contract ("PACS" in France) i.e. any agreement between unmarried individuals living together

**Corporate legal entities**
- Up-to-date memorandum and articles of association of the company, operating agreement or by-laws
- Company registration certificate ("extrait Kbis" in France)
- Copy of the minutes of the general meeting of partners/ shareholders appointing the representative of the company
- Copy of the minutes of the general meeting authorizing the transaction at the agreed price.

**If the documents are in a foreign language (non-French), they must be translated into French.**
In some cases, it is necessary to obtain confirmation or clarifications from a local legal expert concerning the investor's marital property regime.

Similarly, an affidavit from a lawyer of the country where the corporate entity has its registered office must be obtained to confirm its legal existence and its capacity to conclude the transaction and to be represented by a representative to be designated.

## LAND REGISTRY, CADASTRAL PLAN

**Every real estate property is designated by cadastral references specified in the land registry.** The purpose of the "cadastre" or land registry is essentially to reference the properties and determine the appropriate tax base for the taxes payable on the property.

The cadastral plan provides a view of the land parcel in its environment. For example, the plan can be examined to check that the land parcel is not encumbered by any liens, easements or encroachments.

## MORTGAGE STATUS REPORT

**The mortgage status report is the report requested from the land registry service by the notary concerning the properties to be purchased or sold.**

**This report enables the notary to verify that:**

- **The seller's ownership of title.**
- **There is no registered mortgage on the property.** If the property is mortgaged, the mortgage creditor's consent to the sale of the property must be obtained, and the amounts payable to the creditor must be agreed upon. In most cases, the mortgage creditor (mortgagee) will be a bank. Registration with the land registry service gives the bank priority over the vendor, in the event of a sale, to receive the share of the price corresponding to the outstanding mortgage. The notary must therefore verify that the mortgage is paid off, to ensure that the buyer is not obliged to pay the seller's debts in addition to the purchase price.
- **The property is not burdened by any servitude or easement.** For example, the property may be encumbered by a right of way.

## PLANNING AND DEVELOPMENT INFORMATION

**The notary undertakes to obtain the following documents for the promise to sell, or if not for the final sale:**

- **A planning certificate** ("certificat d'urbanisme") or a planning information notice stating the key planning information pertaining to the site (land zoning, public utilities, determination of the applicable preemption rights etc.),
- A certificate confirming that **the property is not situated close to or over a building line reserved for widening a public highway.**
- **A certificate on the location of the property relative to quarries** (only applicable in specific regions).

## DOCUMENTS RELATING TO CO-OWNERSHIP

**If the property is a condominium, the following documents must be communicated:**

- The co-ownership agreement - condominium division description and all subsequent amendments. These documents stipulate the rules applicable in the building,
- The dated preliminary assessment issued by the condominium administrator. This preliminary assessment provides financial information concerning the sold property, the co-ownership charges, the total unpaid debts internal to the co-ownership and the debts to third parties.
- The minutes of the general meetings of the condominium owners' association for the last 3 years.
- The maintenance log. This document records technical information on the maintenance and works carried out in the building/complex.
- The summary information sheet of the condominium. This document is required to inform the co-owners of the operation of the co-ownership and the state of the building.

## MANDATORY TECHNICAL SURVEYS

**The table aside summarizes the mandatory surveys and information**

In most cases, the seller would merely not be exonerated against hidden defects if he/she would not provide these inspection reports. The seller will be held liable for all non-conformities that the missing survey/inspection would have revealed.

**Two further penalties are applied:**

- The absence of an "ERP" can lead to cancellation of the sale or a reduction in price.
- In case of error of more than 5% between the actual floor area of a condominium unit and the area specified in the deed of sale, the buyer is entitled to take legal action for a reduction in price.

The constitution of the full set of mandatory surveys and inspection reports must be carried out by an independent professional specially authorized and insured for this purpose.

The seller is not required to carry out works to bring the property into compliance with the required standards. The seller is simply obliged to inform the buyer of the condition of the property by sending the buyer the surveys and inspection reports. We therefore advise you, if you are a buyer, to obtain a price estimate before signing the promise to sell, so that you will have an idea of the costs of bringing the property into compliance with the required standards.

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| DOCUMENT OR INFORMATION TO BE PROVIDED | BUILDINGS CONCERNED | VALIDITY PERIOD |
|---|---|---|
| LEAD EXPOSURE RISK | Residential buildings built before 1 January 1949 | 1 year if lead is detected. Otherwise unlimited |
| ASBESTOS INSPECTION REPORT | Buildings with a building permit dating from before 1 July 1997 | unlimited |
| TERMITES INSPECTION REPORT | Only in some sectors | 6 months |
| INSPECTION REPORT FOR THE INTERIOR GAS INSTALLATION | Residential buildings with a gas installation older than fifteen years | 3 years |
| REPORT ON THE NATURAL, MINING, TECHNOLOGICAL AND POLLUTION RISKS (“ERP”) | All buildings | 6 months |
| ENERGY EFFICIENCY AUDIT (“DPE”) | Buildings with a fixed heating system | 10 years |
| INSPECTION REPORT FOR THE INTERIOR ELECTRICITY INSTALLATION | Residential buildings with an electricity installation older than fifteen years | 3 years |
| INSPECTION REPORT CONCERNING THE NON-SHARED SANITATION INSTALLATIONS | If the residential building is not connected to the main drain (public wastewater drainage network)* | 3 years |
| INFORMATION ON THE RISK OF DRY ROT | Only in some sectors | – |
| CERTIFICATE OF HABITABLE FLOOR AREA MEASUREMENT | Condominium units | Unlimited unless the floor area is modified |

(*) Even if a building is connected to the public wastewater drainage network, we advise you to request an inspection to ensure that it complies with requirements. Failing inspection, you should know the total value of works conducted to bring the system into conformity with the applicable standards. Some cities require the seller to obtain a certificate of conformity of the wastewater drainage connection before the sale can take place.

## 3. SIGNING A PROMISE TO SELL

**In the promise to sell, the owner (the promisor) promises the prospective buyer (the promisee) to sell the property to the promisee for a specified price. In other words, the owner gives the prospective buyer an exclusive opportunity to buy the property within a limited period of time (generally two to three months).**

During this period, the owner is prohibited from withdrawing from the sale or from offering the property to another buyer.
In return for this commitment, the prospective buyer pays the owner a sum of money, generally set at 5 or 10% of the sale price, as option fee or deposit. If the prospective buyer decides to go ahead with the purchase, the advanced sum is deducted from the outstanding amount payable. However, if the prospective buyer withdraws from the sale even though all the conditions have been duly implemented, the deposit is retained by the owner as compensation.

The following conditions allow the cancellation of this promise to sell if certain events occur before the final sale: refusal of the buyer's bank to grant the necessary loan, exercise of the right of pre-emption by the local authority, discovery of an easement or planning constraint that significantly reduces the value of the property, etc.

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**Although it is not mandatory under French law, this initial promise to sell is very useful for securing the transaction and enables:**

- The seller to conduct all the preliminary formalities prior to signature of the final deed of sale (collection of all necessary documents, release from the various pre-emption rights etc.) and to prepare for moving out, where applicable,
- The buyer to obtain financing (the bank generally requests a copy of the promise to sell), to structure the purchase, for example by forming a company, and to release funds.

PLEASE DO NOT HESITATE TO CONTACT US FOR FURTHER DETAILS ON THE VARIOUS TYPES OF PROVISIONAL SALE CONTRACT AND THEIR SPECIFIC USES.

# 4. PERIOD BETWEEN THE PROMISE TO SELL AND THE FINAL DEED OF SALE.

**The period between the promise to sell and the final deed of sale permits to finalize the documentation necessary for closing.**

## COMPLIANCE WITH THE STATUTORY COOLING-OFF PERIOD

**If the buyer is a private individual who has signed a promise to sell for a property for residential use, he/she has a period of ten days to withdraw from the purchase without specific conditions attached (by registered letter with acknowledgement of receipt).**
This "cooling off period" starts with effect from the day after the first presentation of the registered letter with acknowledgement of receipt containing the copy of the promise to sell and its appendixes.
In the event of cancellation during this period, the deposit must be returned to the buyer within 21 days.
Please note: companies do not have this right to withdraw from the contract.

## SATISFYING THE CONDITIONS PRECEDENT STIPULATED IN THE PROMISE TO SELL

### Preemption rights

**The notary has undertaken to release the property from the various preemption rights applicable to the property.**
Preemption is a procedure that allows certain entities or persons to purchase the property before it is offered to any other person or entity. In most cases, the persons or entities possessing pre-emption rights have two months to declare their intent. Before the sale, the property must therefore be released from these rights.

**The main preemption rights are as follows:**

- Preemption right of the municipal or district council (only in certain zones)
- Farmer's right of preemption (in the case of a rural lease concerning the sold property)
- Tenant's right of preemption
- Preemption right of "SAFER", the French land agency
  (only in certain zones, in the case of property for agricultural use)
- Preemption right of the joint owners
  (in the case of the sale of a pro indiviso share of a whole unit of property)

### Financing of the buyer

The buyer has the right to insert a condition precedent concerning the financing of the purchase in the promise to sell. In practice, the buyer is allowed a period of 30 to 60 days to obtain a final loan offer. This point has often been the subject to negotiation.

## DRAWING UP THE FINAL DEED OF SALE AND RELEASING FUNDS

**Once all the conditions precedent of the promise to sell have been satisfied, the notary draws up the draft deed of sale and sends it to the parties.**
The notary also sends the buyer a statement of the balance that must be paid by direct bank transfer and that must enter the notary firm's transaction account at the latest on the day before closing.

**This account statement includes:**

- the balance of the sale price (less the deposit already paid),
- the costs and taxes relating to the purchase,
- the notary's fees.

At the request of the banks, the loan is frequently released directly by the notary.

The buyer must obtain a certificate from the buyer's bank confirming that the funds are genuinely from the buyer's account (mandatory for the prevention of money laundering - in conformity with the model certificate provided by Michelez Notaires).

Finally, the notary sets an appointment with the parties for signature of the final deed of sale, subject to the parties availability.

## FINAL VISIT OF THE PROPERTY AND READING OF UTILITY METERS

**Michelez Notaires strongly recommends the buyer to conduct a last walk-thru before signing the final deed of sale** (generally on the day before signing, or even on the morning of the closing) to make sure that the property has been cleared and vacated and has not been modified since the signature of the promise to sell.

THIS LAST WALK-THRU ALSO PROVIDES AN OPPORTUNITY TO READ THE WATER, GAS AND ELECTRICITY METERS IN THE PRESENCE OF BOTH PARTIES.

## 5. SIGNATURE OF THE FINAL DEED OF SALE

**The deed of sale reiterates the provisions of the promise to sell and adds any new information received since signing the promise to sell.**

After signature, the notary immediately transfers the sale price to the seller and delivers the certificate of sale.

### ON THE DATE OF SIGNATURE OF THE FINAL DEED OF SALE, THE BUYER MUST REIMBURSE THE FOLLOWING SUMS TO THE SELLER:

- the pro rata basis of property tax for the year in progress,
- the pro rata basis of co-ownership charges for the quarter in progress, where applicable, and
- the working capital of the condominium, where applicable.

In return, the seller hands over the keys to the buyer and reimburses the buyer in advance for any condominium works that were voted before the promise to sell but that have not yet been called by the property manager.

### THE TABLE BELOW SUMMARIZES THE REIMBURSEMENTS DUE BETWEEN THE PARTIES:

| | SUMS OWED BY THE SELLER | SUMS OWED BY THE BUYER |
|---|---|---|
| Property taxes, pro rata | | ✓ |
| Condominium charges, pro rata | | ✓ |
| Working capital | | ✓ |
| Works payable by the seller that will be demanded from the buyer | ✓ | |
| Balance in favour of the seller or buyer | | |

**Finally, the buyer must insure the property against fire on the date of signature of the final deed of sale** and must contact the various utility companies (water, gas and electricity) to transfer the meters to the buyer's name. Usually, these utilities will not have been cut off, and a simple phone call is sufficient to transfer the contracts.

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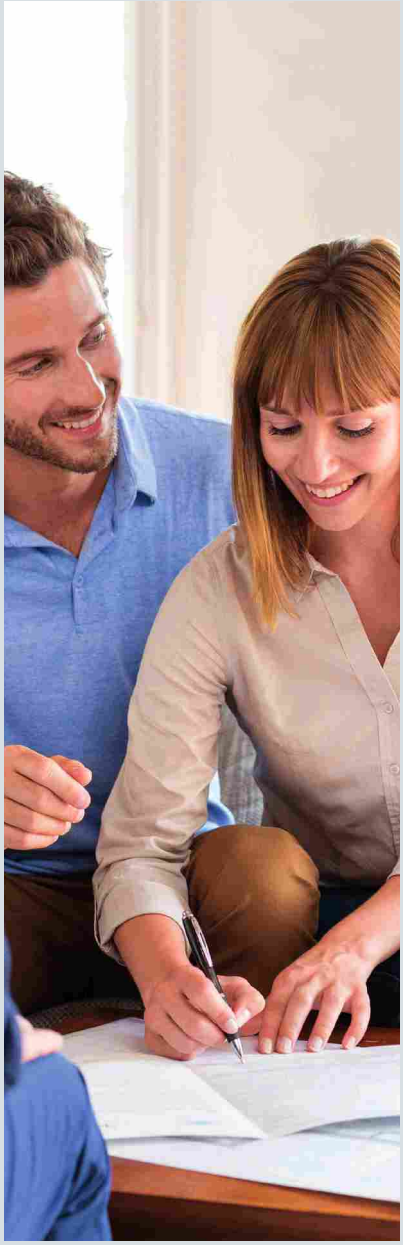
## 6. FORMALITIES AFTER THE DEED OF SALE

**The notary will inform the property manager of the change of owner and will proceed to complete the land registry formalities to update the land registry.** The notary will pay the various taxes to the tax office with the money the notary received from the buyer at the closing (commonly and incorrectly termed the "frais de notaire" in French) and the capital gains tax owed by the seller, where applicable. Thus, both the seller and buyer do not themselves have to proceed with any particular formalities with regard to the property manager or tax authorities.

Subsequently, the property manager will send the buyer, at the address of the property or any other specified address, the documents to be signed to pay on going condominium charges.



**ONCE THESE FORMALITIES HAVE BEEN COMPLETED, THE NOTARY WILL SEND THE BUYER:**

- a copy of the final deed of sale, which will constitute the buyer's title deed,
- the account statement of the account opened at Michelez Notaires in the name of the buyer,
- the balance of the said account by direct bank transfer. The reason for this residual balance is that the sums demanded at the time of signing the final deed of sale constitute a reserve fund, and there is generally a small balance to return to the buyer when the file is closed.

IN VIEW OF THE TIME TAKEN BY THE FRENCH ADMINISTRATION TO PROCESS THE FILE, THERE IS GENERALLY A PERIOD OF TWO TO THREE MONTHS BETWEEN THE SIGNATURE OF THE FINAL DEED OF SALE AND THE CLOSING OF THE FILE.

## 1. STRUCTURING THE PROPERTY PURCHASE

### DIRECT PURCHASE

The buyer, as an individual physical person, would buy here the property in his/her own personal name.

**If the buyer wishes to sign alone but is married or subject to a civil partnership,** the legal property regime of this union must be defined (generally either separation of estates or community of property), to determine whether the property belongs exclusively to the signatory, the couple, or to several individuals in general.

**If both persons in a married couple or civil union wish to sign the purchase,** the legal regime of the purchased property must be specified, stating the share owned by each person, where applicable.

**If the persons are subject to foreign law,** the assistance of a local legal expert will be necessary to confirm the legal property regime of their union and to ensure the legal security of the deed of sale.

**If several persons (unmarried under a regime of community of property) wish to purchase a real estate property,** this can be done under the regime of joint ownership. Joint ownership is the legal situation where two or more persons jointly own the same thing. A purchase under the regime of joint ownership is initially pretty simple: the share of each person in the property is established on purchase. However, subsequently, the operation of joint ownership can become complicated. Indeed, the rule of unanimity prevails for the most important decisions concerning the jointly owned property, and deadlocks are therefore possible due to disagreement. Moreover, the legal regime of joint ownership is provisional. Each joint owner can at any time request the division and sharing out of the property. This issue, however, can be addressed by signing a notarized joint ownership agreement. This agreement enables the joint owners to organize the life of the shared property, and, in particular, to allocate the expenses or to appoint a property manager.

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# TWO METHODS OF PURCHASE ARE POSSIBLE

DIRECT PURCHASE

PURCHASE THROUGH THE INTERMEDIARY OF A COMPANY

## PURCHASE THROUGH THE INTERMEDIARY OF A COMPANY

### The "Société civile"

**Under French law, a "société civile" is a civil-law company having the purpose of holding and managing assets and property, to the exclusion of any business activities. It is therefore a form of investment company.** When the assets held and managed consist mainly of real estate property, the company is technically called a "société civile à prépondérance immobilière".

In common usage, it is called a "société civile immobilière", or SCI.

No minimum amount is imposed on its registered capital. In the absence of a specific tax election, a société civile owned by private individuals is generally subject to the same tax regime applicable to individuals purchasing the real estate directly. Consequently, contrary to widespread belief, the société civile does not enable its owners to make any savings on income tax (rental income).

**Main advantages:** The société civile enables individuals to avoid the pitfalls of joint ownership. For example, a shareholder cannot itself request the dissolution of the company, except under extremely restrictive conditions. The company can also constitute an attractive vehicle for inheritance purpose. The cost of passing on interests in the SCI is generally lower than the cost of transferring the directly purchased real estate. In some tax agreements (although decreasingly so), the transfer of company shares will not be taxed in France but in the home country of the deceased shareholder.

**Main disadvantages:** Setting up a société civile will generally costs between 2,000 and €3,000, and its operating rules will require regular monitoring (account keeping, annual general meeting etc.). Also, some countries do not recognize this type of company or assimilate it to a trading company, thereby causing significant difficulties, for example in the case of succession and inheritance. Finally, if the buyer wishes to rent the property furnished (even only for a few weeks a year), we advise against this type of company, because in this case the company would be subject to corporation tax (which is a restrictive tax regime in France).

There are other legal forms of entities to purchase real estate, apart of the SCI. However, trading companies in their various forms cannot be used for the purely civil purpose of transferring inheritance. Alternatives should be analysed on a case by case basis.

## Other types of company

**It is possible to purchase a property in France through other legal forms of company, in particular a trading company registered under French or foreign law, especially if the aim of the company is to make regular investments and/or buying and selling transactions.**

This structure entails all the civil and fiscal consequences of a business: Even if the property is not rented out, the company will still be taxed in France on a deemed rental income. In the case of resale, capital gains tax will be calculated according to the rules applicable to trading companies, which are less attractive.

THE FAMILY-OWNED COMPANY LIMITED BY SHARES ("SARL DE FAMILLE") PROVIDES AN ATTRACTIVE TAX AND LEGAL REGIME PROPERTY TO PURCHASE A SEASONAL FURNISHED RENTAL AND WOULD GENERALLY BE PREFERRED TO THE SOCIÉTÉ CIVILE.

## 2. FINANCING THE PROPERTY PURCHASE

**The purchase can be financed by means of a loan obtained in France or abroad.**

### FRENCH BANKS REQUIRE THE FOLLOWING GUARANTEES:

- Mortgage on the property purchased in France.
- "Lender's preferential right" ("privilège de prêteur de deniers") has the advantage of costing less than a conventional mortgage (saving of 0.715% on the borrowed sum and its ancillary costs), while providing the bank with an equivalent guarantee.
- Intervention of an external guarantor company that guarantees the payment of the sums owed by the borrower in the event of the borrower's default.

If a non-resident foreign buyer is not already a customer of a bank in France or of its foreign subsidiary, the buyer will currently find it quite difficult to obtain a loan in France.

Usually, foreign banks require a conventional mortgage on the property located in France as a guarantee of reimbursement of the loan and its ancillary costs. Few foreign banks are aware of the mechanism of the preferential lender's rights.

The resale of a property during the effective period of the mortgage backed guarantee (mortgage or lender's preferential rights) will require the redemption of the encumbrance, which will entail costs for the borrower.

## 3. THE COST OF PURCHASING A PROPERTY IN FRANCE

**The advance on costs and fees demanded to draft the promise to sell and to request the first documentary evidence is generally 500 euros.**

**Before signing the final deed of sale, the buyer must pay the notary:**

- the balance of the sale price,
- the commission due to the real estate agency, and,
- the costs and taxes incorrectly referred to in France as "notary's costs".

### THESE COSTS AND TAXES INCLUDE:

- **transfer duties or land registry charges:** These taxes and duties are paid to the French State and to local authorities for each change of owner. They vary according to the nature of the property and its geographical location. In the most frequent case (purchase of a built property for residential purposes), these taxes and duties represent approximately 5.80% of the purchase price. In the case of a commercial or office building in the Paris region, they will be about 6.41%, Finally, in the case of a new building sold by a professional, they will be 0.715%, calculated on the price without VAT, in which case the sale will be subject to VAT.

- **"Contribution de sécurité immobilière":** this tax on property transaction formalities represents 0.1% of the purchase price.

- **Notary's fees:** The remuneration of the notaries on the seller's and buyer's sides will depend on the nature of the final deed of sale. In most cases, it represents 0.814% of the purchase price, excluding VAT. It is payable in entirety by the buyer and is divided between the notaries.

- **Miscellaneous disbursements:** These are the sums paid by the notary on behalf of the client both to pay the various service providers (for example the surveyor) and to pay the cost of the documents requested by the notary (mortgage status report, titles deed etc.).

**In case of financing, the following costs should be added to the above costs and taxes:**

- the bank charges for opening and processing the application,
- the cost of insurance, and
- the costs of the guarantee to the lender.

# HOW MUCH DOES IT COST ?

**In addition to the operating and maintenance costs of the property, the following taxes should be considered:**

## TAXE D'HABITATION (TH)

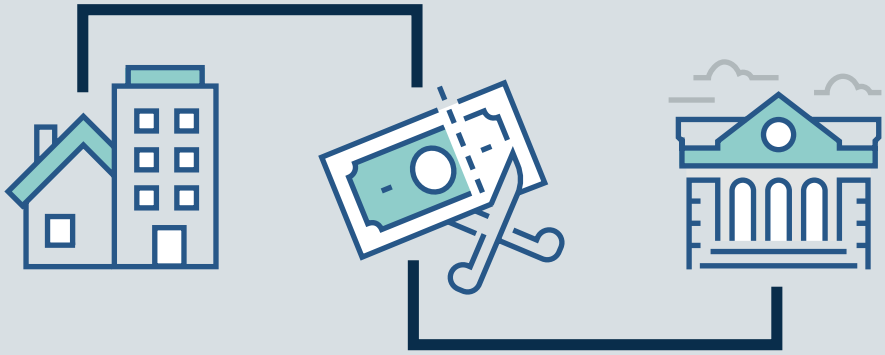
**This French residence tax is an annual tax** for all residential furnished premises and their immediate dependencies, payable in entirety by the person having the use or possession of the property on the first of January of the tax year. If the property is rented, the tax is therefore payable by the tenant.

## TAXE FONCIÈRE (TF)

**This French property tax is payable by the property's owner as of the first of January of the relevant tax year,** regardless of the owner's place of tax residence or whether the property is occupied or not. In the case of a sale, the owner on the first of January remains liable to the French administration for the whole year in progress. Contractually , the buyer reimburses this tax to the seller pro rata basis, according to the date of completion (signature of the deed of sale).

## TAX ON VACANT PREMISES

**The tax on vacant premises (housing) is only payable in some cities** by the owners of (unfurnished) housing units that have remained vacant for at least one year on the first of January of the relevant tax year.



## WEALTH TAX "IMPÔT SUR LA FORTUNE IMMOBILIÈRE" (IFI)

**The IFI is an annual French wealth tax payable by private individuals** owning real estates properties for a net value exciding € 1,300,000 on the first of January of the relevant tax year. With some exceptions, this tax is payable in France by non-residents for the French real estate properties that they directly owned or through a company.

The amount subject to tax is net of loan used to finance the purchase. Thus, a non-resident may not initially be subject to the IFI who for a purchase of real property, net of debt, below the threshold of € 1,300,000. The threshold, however, may be subsequently exceeded following the reimbursement of the principal of the loan. It is possible to have recourse to an "in fine" loan, for which the capital is only reimbursed at the end of the loan period. In this case, the deductible amount is capped as if the loan was repaid linearly.

However the value of the shares of a real estate company (*société à prépondérance immobilière*) cannot be net of a loan granted by the partner/shareholder to the company.
The shares value can be reduced by an allowance for illiquidity (generally 10%), given the difficulty of selling company shares to a third party as opposed to selling the property directly.

**The IFI rates applicable on first January 2019 are summarized below:**

| FRACTION OF THE NET TAXABLE VALUE OF THE TOTAL ASSETS (P) ON FIRST JANUARY OF THE YEAR | APPLICABLE RATE | ANNUAL TAX AMOUNT |
|---|---|---|
| Not exceeding €800,000 | EXEMPT | 0 |
| Greater than €800,000 and less than or equal to €1,300,000 | 0,5 % | 0 (if the €1,300,000 threshold is not attained) |
| Greater than €1.300,000 and less than or equal to €2,570,000 | 0,7 % | (P x 0.007) - €6,600 (*) |
| Greater than €2,570,000 and less than or equal to €5,000,000 | 1 % | (P x 0.01) - €14,310 |
| Greater than €5,000,000 and less than or equal to €10,000,000 | 1,25 % | (P x 0.0125) - €26,810 |
| Greater than €10,000,000 | 1,50 % | (P x 0.015) - €51,810 |

(*) The tax payable is calculated after applying a rebate, where applicable, for taxpayers with net taxable assets greater than or equal to € 1.3 million and less than € 1.4 million.

## TAX ON UNFURNISHED RENTAL INCOME

This income represents rental income from unfurnished property, **which is subject to two tax regimes.**

**First,** in general the rental income would be taxed after deducting the real costs and charges inherent to rented property.

**Second,** the "micro-BIC" regime, which can be applied when the gross rental income does not exceed €15,000 per year. Under this regime, the taxable income is the rental income net of a fixed deduction equal to 30% of the gross rental income.

**This income is taxable in France, regardless whether the property is owned directly or through an "SCI" under the following tax rates:**

**INCOME TAX SCHEDULE FOR 2018**

| FRACTION OF TAXABLE NET INCOME (R) | TAX RATE | GROSS TAX AMOUNT FOR ONE SHARE OF THE FAMILY QUOTIENT |
|---|---|---|
| Up to €9,964 | 0 | 0 |
| From €9,965 to €27,519 | 14% | (R X 0.14) – €1394.96 |
| From €27,520 to €73,779 | 30% | (R X 0.30) – €5798 |
| From €73,780 to €156,244 | 41% | (R X 0.41) – €13,913.69 |
| More than €156,245 | 45% | (R X 0.45) – €20,163.45 |

This income is also subject to levied social security tax at the rate of 17.2% as French résidents (7.5% for residents in other countries of the European Economic Area and Suisse, under conditions).

## INCOME FROM FURNISHED RENTAL PROPERTY

**Income from rented furnished property is taxed as commercial profit ("BIC").**
**The most frequent (non-professional) tax schedule applied is summarized below:**

### GENERAL CASE

| Rental income not exceeding €70,000 | Rental income exceeding €70,000 |
|---|---|
| "Real profit" system **Or** option for the "micro BIC" system: the taxable profit is equal to the income minus a fixed deduction of 50% for costs. In this case, utilities and other charges cannot be deducted. | "Real profit" system: Only the actually incurred costs and charges can be deducted. |

### SEASONAL RENTAL (RURAL FURNISHED HOLIDAY COTTAGE OR GUEST HOUSE ROOM)

| Rental income not exceeding €170,000 | Rental income exceeding €170,000 |
|---|---|
| "Real profit" system **Or** option for the "micro BIC" system (except for rural holiday cottage): the taxable profit is equal to the income minus a fixed deduction of 71 % for costs. In this case, utilities and other charges cannot be deducted. | "Real profit" system: Only the actually incurred costs and charges can be deducted. |

After application of the fixed deduction or the deduction for actual costs and charges, the income is taxed at the same tax rates as defined above in the case of rental income for unfurnished rented premises.

As indicated above, an SCI's furnished rental income would be subject to corporate tax.

France has concluded numerous tax treaties to prevent double taxation of income with investor's countries of residence.

## 3% TAX

**if the real estate investment in France is implemented through a company,** in principle, a tax of 3% calculated on the market value of the property/properties is payable. This tax applies to all legal entities, whether French or foreign. Subject to compliance with certain required filing obligations, exemptions would apply to corporate entities having their registered office in France or in a country which has signed a tax administrative assistance to prevent fraud and tax evasion. Given the large number of tax treaties signed by France, the above-mentionned exemption would often apply.

# 1. IN THE CASE OF A SALE

## CAPITAL GAINS TAX

**If a real estate property is sold for a price greater than its purchase price, a capital gain is realized. In most cases, this capital gain is taxable in France.**

This tax only applies to transfers of ownership in exchange for payment. Thus, a gift or a transfer by inheritance will not trigger any capital gain taxation.

### Calculation of the capital gains tax payable by private individuals

**Sale price**
This price is reduced by the selling costs borne by the seller. If the real estate agency commission is paid by the seller, it will be deducted from the sale price.

**Acquisition price**
The acquisition price corresponds to the purchase price actually paid by the seller. If the property was received by gift or inheritance, the acquisition price corresponds to the value retained to determine the tax duties on the gift or inheritance.

**Acquisition costs**
These costs can either be evaluated at a fixed rate of 7.5% of the purchase price or at the actual amount paid if it was higher.

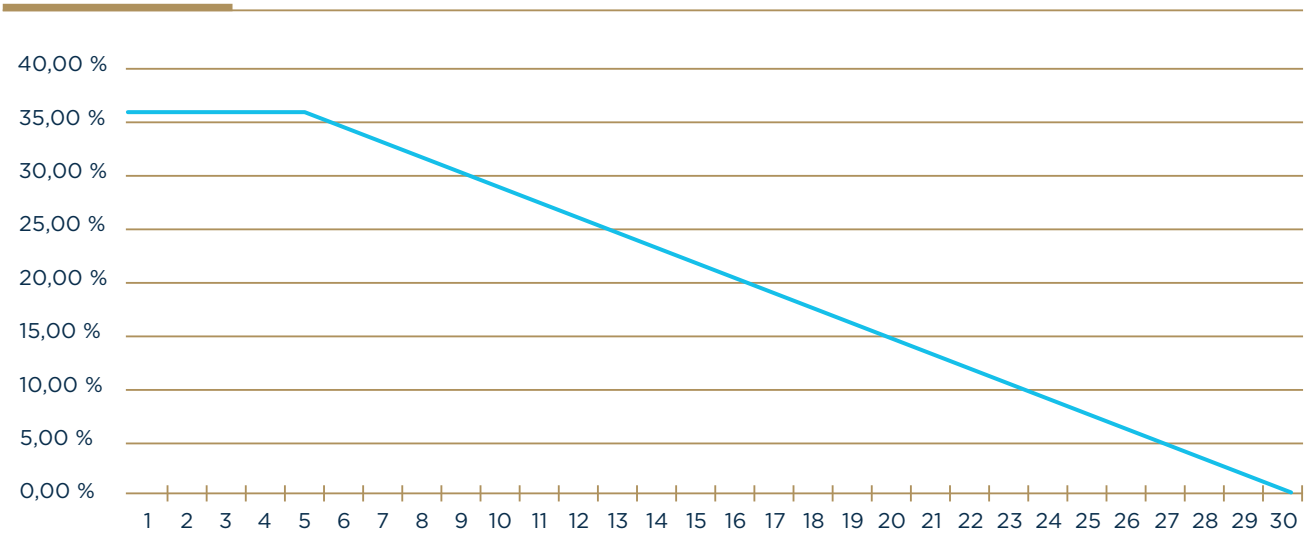
**Expenditure on works**
If the property is sold more than 5 years after its acquisition, the cost of maintenance and repair works can be evaluated at a fixed rate of 15% of the acquisition price. If the property is sold less than 5 years after its acquisition or if their amount exceeds 15%, the works can be evaluated at the actual amount paid (unless this expenditure was already taken into account to calculate income tax).

MICHELEZ NOTAIRES

The gross capital gain [sale price – (acquisition price + acquisition costs + the expenditure on works)] is reduced by an allowance for the duration of ownership.

Total exemption from capital gains on real estate is acquired after thirty years of ownership.

**TAX RATE PER YEAR OF OWNERSHIP**



## Tax on capital gains exceeding €50,000

This tax is applied to high capital gains on the sale of real estate other than land for construction if the taxable capital gain is higher than €50,000. This tax is calculated on the total taxable capital gains on the basis of a specific scale.

## Exemption of non-residents for residence in France

**This exemption only concerns the first sale of a property in France by a non-resident, under the following conditions:**

- the sale must be the first sale occurring since the first of January 2006,
- the seller must be able to prove that he/she was domiciled in France for all his/her income for an uninterrupted period of at least two years at any time before the sale,
- if the seller has fiscally left France for more than 10 years, he/she must have free disposition of the property since the first of January of the year preceding the sale,
- the seller must be a physical person having the nationality of a country member of the European Economic Area (except for Liechtenstein). A SCI cannot therefore benefit from this provision.

The total amount of the exemption from capital gains tax is capped at €150,000 (after application of the allowance for duration of ownership).

**Departure from France: total exemption of the principal residence.**

This exemption concerns the sale of a property in France, under the following conditions:

- the sold property constituted the principal residence of the seller on the date of the transfer of his tax residence outside France,
- the tax domicile is transferred to an EU State or a State that has concluded a tax administrative assistance with France to prevent fraud and tax evasion
- the sale be signed no later than December 31 of the year following the year of transfer of fiscal domicile,
- the building has not been made available to third parties, whether free of charge or onerous, between this transfer and the sale.

## Tax payment

The notary assumes responsibility for submitting the tax declaration and for payment of the capital gains tax on real estate to the land registry service.

## Calculation of the capital gains tax liability of companies (other than SCI owned by private individuals)

**These companies will be subject to corporation tax at the rate of:**

- 15% up to €38,120 of taxable profits,
- 28% for the fraction of taxable profit between €38,120 and €500,000,
- 31% for amounts exceeding €500,000.

**As from the first of January 2020, the following rates will apply:**

- 15% up to €38,120 of taxable profits,
- 28% for amounts exceeding €38,120.

**The methods of calculation are different to those specified above:**

- no fixed rate of 7.5% or 15% is applicable to the acquisition price,
- the purchase price of the built property must be subject to depreciation (which increases the capital gains by the same proportion),
- some works are deductible after depreciation,
- there is no exemption for the duration of ownership.

## ACCREDITED TAX REPRESENTATIVE
### (Sale by a resident of a country outside the european economic area)

**The accredited tax representative guarantees the accuracy of the capital gains tax declaration. The representative undertakes to pay the tax and the penalties in the case of payment of back taxes. The liability of the accredited tax representative is unlimited.** The table below summarizes the cases where the designation of an accredited tax representative is mandatory:

| INDIVIDUAL PERSON OR INDIVIDUAL PARTNER OF A COMPANY CONSTITUTED OF INDIVIDUALS | FOREIGN COMPANY OR FOREIGN LEGAL ENTITY AS PARTNER OF A COMPANY OF INDIVIDUALS |
|---|---|
| **Sale price higher than €150,000 for residents outside the European Economic Area or Liechtenstein, with or without capital gains (except in the case of ownership for more than 30 years)** | **If the registered office of the company is outside the European Economic Area or in Liechtenstein** |

The remuneration of the accredited tax representative, paid by the seller, is generally set at an amount between 0.5 and 1% of the sale price VAT including.

Under certain conditions, we can prepare an application file for accreditation of a person domiciled for tax purposes in France and for a cost lower than companies already accredited.

## 2. DONATION OR INHERITANCE

### IN THE CASE OF DONATION

**A real estate property can be given in full ownership or in bare ownership (in which case the owner reserves the tenancy and use of the property during his/her lifetime).**

It is necessary to verify that the investor's country of residence recognizes the separation of usufruct and bare ownership. Some countries do not recognize this mechanism.

**In accordance with article 750 Ter of the French General Tax Code (Code Général des impôts), the following are subject to transfer duties for donation in France:**

- Movable and immovable assets located in France or outside France if the donor or deceased person is resident for tax purposes in France.
- Movable and immovable assets located in France and owned directly or indirectly, if the donor or deceased person is not resident for tax purposes in France.
- Movable and immovable assets located in France or outside France received by the heir, recipient, legatee or beneficiary of a trust domiciled for tax purposes in France on the date of transfer and for at least six years during the ten years prior to the year during which said person receives the assets.

Therefore, donations of assets located outside France are not taxable in France if the donor and the done are not domiciled for tax purposes in France (or if the done has only been domiciled in France for a short time).

In the absence of a tax treaty with France, there is a high risk of double taxation of donations (in France and the country of residence).

Beyond a certain rebate threshold (€100,000 between parents and children), transfer duties for transfers of ownership are payable in France on the basis of a progressive scale, depending of the affiliation between the donor and the beneficiary.

**For example, the scale for the direct line (parent to child) is as follows:**

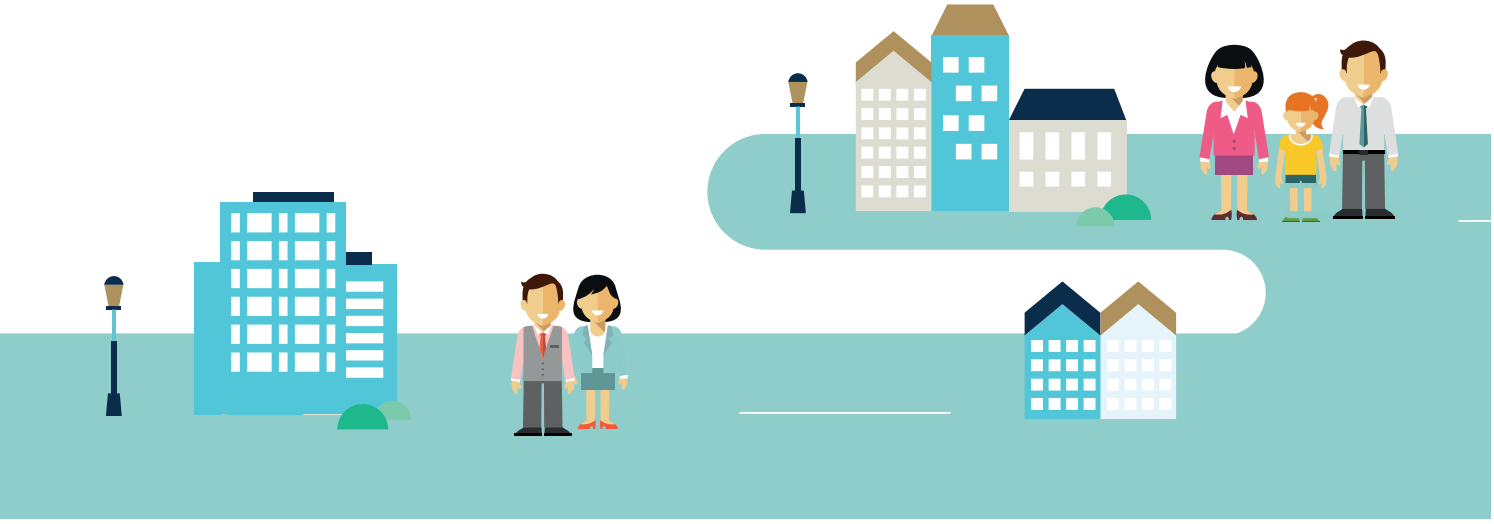
| TAXABLE SUM AFTER REBATE (M) APPLICABLE RATE (PER CHILD) | APPLICABLE RATE | TRANSFER DUTIES DUE |
|---|---|---|
| Not exceeding €8,072 | 5 % | M x 0,05 |
| Between €8,072 and €12,109 | 10 % | (M x 0,1) – €404 |
| Between €12,109 and €15,932 | 15 % | (M x 0,15) – €1,009 |
| Between €15,932 and €552,324 | 20 % | (M x 0,20) – €1,806 |
| Between €552,324 and €902,838 | 30 % | (M x 0,30) – €57,038 |
| Between €902,838 and €1,805,677 | 40 % | (M x 0, 40) – €147,322 |
| Greater than €1.805.677 | 45 % | (M x 0,45) – €23,7606 |

In the case of separation of a property between usufruct and bare ownership, the value of the usufruct (possession) is calculated in consideration of the age of the donor and the date of the notarized deed, in accordance with a specific tax scale.

## IN THE CASE OF INHERITANCE

**The applicable rates are the same as for donation.**
**By contrast, married spouses and persons subject to a registered civil partnership are fully exempt from transfer duties for the transfer of ownership in France in the case of inheritance.**
Here, it should be noted that France has signed several inheritance tax treaties to prevent double taxation.

In addition to any transfer duties, the seller should consider the notary's fees and the fees charged by the land registry service for updating the land registry.



# CONCLUSION

We hope that this guide has been useful to you and that it will help you to make the right decisions.

**We remain at your service if you require any assistance. Your contact persons:**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