THE FRENCH 3% TAX ON REAL ESTATE: A GUIDE TO TREADING IN PERILOUS WATERS

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INTRODUCTION

"*No one is supposed to be ignorant of the law*," as wrote Roman lawyers.[1] Yet no rule is more easily ignored than one no one seems to have heard of, and few provisions of French tax law make the point as neatly as the annual 3% tax on the fair market value of French real estate held by legal entities (*taxe annuelle sur la valeur vénale des immeubles* or "T.V.V.I."). Indeed, while having a very broad scope – the 3% tax is never far away where a French real estate property is not owned directly by an individual – it seems to be often overlooked by international investors, exposing them to significant (though avoidable) tax risks.

Thus, for those who contemplate embarking in a French real estate acquisition adventure and for those who have already embarked, it is important to understand the implications of this very specific tax.

This 3% tax was initially conceived as a tracking device. Where French property is held through a foreign opaque structure,[2] the French tax authorities ("F.T.A.") cannot easily identify the individuals behind it for wealth tax or registration duty purposes. The 3% tax is the price of such opacity. The 3% rate applies to the value of the underlying real estate irrespective the debts of the entity owning it or the actual value of its shares. Thus, the tax amount may exceed the entity's net assets (value minus liabilities). Since the F.T.A.'s right to reassess is not time-barred until the end of the sixth year following the year of the taxable event (*i.e.* ownership of real estate in France as at January 1 of a given year), a failure to comply with the 3% tax obligations can crystallize into an exposure of up to 21% of the real estate asset value.

However, exemptions are available. The main exception relates to an annual reporting obligation, indicating (i) the location, composition, and value of real estate assets and (ii) the identity of holders of more than 1% of the "rights" in the entities owning the French real estate. The information provided must be extremely accurate, complete and verifiable because the F.T.A. and the tax judge enforcing this requirement do so with a severity that does not leave room for mistakes, even if made in good faith.

Several decades after the introduction of the 3% tax into the French legal system (with a substantial amendment in June 2026), the abundant case law of recent years

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1 *Regula est iuris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere* ("the rule is that ignorance of the law harms a person, whereas ignorance of fact does not"), Digeste 22.6.9 pr. (Paul, *liber singularis de iuris et facti ignorantia*), as originally laid down in Justinian's *Corpus Juris Civilis*, before it became, under the influence of canon law, *Ignorantia facti, non iuris, excusat* ("ignorance of fact, is an excuse, not that of the law").

2 Today, French domestic entities are also included in the scope of the 3% tax.

demonstrates the continued interest which the F.T.A. takes in enforcing the regime and the extent to which the tax remains poorly understood by taxpayers.

After outlining the 3% tax regime and its exemptions, this article delves into practical difficulties of its implementation, and suggests several practical guidelines that may help a client to navigate these perilous waters.

THE 3% TAX REGIME: AN EXTREMELY WIDE SCOPE WITH NUMEROUS EXEMPTIONS

Background: a Tax Conceived as a Tracking Device

The 3% tax was introduced by Law No. 82-1126 of December 29, 1982, and entered in force on January 1,1983, one year after the introduction of the wealth tax.[3] Its objective has never changed. It keeps track of French real estate held through entities in order to support payment of the annual wealth tax and registration duties triggered when the shares of the owning entity change hands. Initially, it was aimed only at foreign companies. Later, it was extended to French companies. Ultimately, it was extended in 2007 to every structure, with or without legal personality, holding French real estate directly or indirectly.

A Deliberately Wide Scope

Pursuant to article 990 D of the French Tax Code ("F.T.C.") as construed by F.T.A. guidelines, the 3% tax is due, in principle, by every legal entity, French or foreign, that owns real estate in France or holds a real estate right[4] over a property, directly or through an interposed entity. Legal form is irrelevant, as the tax targets share capital companies, civil law and common law partnerships, and organizations of every kind, with or without legal personality, such as *Anstalten* and *Stiftungen*, as well as *fiducie*s[5] and comparable institutions, *e.g.* family foundations, trusts and investment funds without legal personality.[6]

Given the above, for the sake of simplification, we shall use the term "entity" in this article, keeping in mind that it refers to multiple legal arrangements.

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3 *Impot sur les Grandes Fortunes* (Tax on Large Wealth), the forerunner of the *Impôt de Solidarité sur la Fortune* (Solidarity Tax on Wealth) and of the current *Impôt sur la Fortune Immobilière* or IFI (Real Estate Wealth tax).

4 *Usufruct* (right to use the asset and receive income deriving from such asset), right of use, easement, etc.

5 Pursuant to article 2011 of the French Civil Code, the *fiducie* is the operation whereby (i) one or more *constituants* (settlors), (ii) transfer assets, rights or interests (present or future), (iii) to one or more *fiduciaires* (trustees), (iv) who hold them separate from their own patrimony, and (v) act for a determined purpose for the benefit of one or more *bénéficiaires* (beneficiaries). Introduced by Law No. 2007-211 of February 19, 2007, it is what comes closest in France to a trust, without corresponding to it perfectly.

6 F.T.A. guidelines: BOI-PAT-TPC-10-10 nos. 30, 40 and 50 (September 12, 2012). To be complete, only the real estate co-ownership companies of article 1655 *ter* of the F.T.C. fall outside the scope of the 3% tax. This is an extremely specific case.

Indirect holding is defined broadly. An entity is deemed to hold French property through an interposed entity whenever it has a stake, of any form or percentage, in another entity that owns the property or stake in yet another entity owning real estate, irrespective the number of interposed entities. Where a chain of ownership exists, the tax is due by the entity or entities which are closest to the property in the holding chain without qualifying for an exemption, as discussed in greater detail below. Hence, each entity in the holding chain must understand and verify its own obligation.

A Deliberately High Cost for Opacity

The 3% tax is assessed on the fair market value of built and unbuilt property located in France (established mainly by comparison with local sales of similar properties) and of real estate rights over it (*usufruct*, rights of use, etc.). Debts contracted by the entity are disregarded as are claims against the property. However, rebates might be applied in order to determine the fair market value, *e.g.* a rebate for a property which is rented, a rebate in case of joint-ownership of the property by several entities or individuals, or rebates in case of litigation related to the real estate.

Two categories of assets are excluded from this taxable base. The first is property allocated by the taxable entity, or by interposed entities to their own business activity other than a real estate activity[7] or to a nonreal estate business activity carried on by another entity belonging to the same group.[8] The second is property belonging in the trade stock of real estate dealers and developers.

Where property is held through an interposed entity, the tax base is reduced in proportion to the rights held in such entity. The F.T.A. published an example in its guidelines[9] to better understand how the rule operates in presence of a chain of ownership. In the example, a rented building located in France belongs to F, a French civil law partnership ("S.C.I."), whose shares are held equally by two foreign entities E1 and E2. All three have reporting obligations.

- F has met its own reporting obligations and is not subject to taxation, as described more fully below.
- E1 is not exempted and is thus subject to tax on 50% of the value of the building.

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[7] Furnished rental is a commercial activity for income tax purposes (article 35, I, 5° *bis* of the F.T.C.). However, it is not a genuine business activity distinct from the management of one's own real estate, unless it qualifies as para-hotel activity (*i.e.* rental with additional services). To be qualified as para-hotel activity, as defined by the F.T.A.'s guidelines, it is necessary for the taxpayer to be an operator who supplies or offers, in addition to the accommodation, at least three of the following four services, on terms similar to those of a professionally run hotel: (i) breakfast, (ii) regular cleaning of the premises, (iii) provision of household linen, and (iv) reception of customers, even if not personalized (BOI-TVA-CHAMP-10-10-50-20, no. 60 (March 26, 2025)). The courts examine the facts and require proof of the reality of the activity.

[8] Pursuant to article 39 §12 of the F.T.C., a relationship of dependence is deemed to exist between two companies when (i) one company holds, directly or through an intermediary, a majority of the other company's share capital or effectively exercises decision-making authority over the other company or (ii) when both companies are under the control of the same third company.

[9] BOI-PAT-TPC-10-20 no. 10 (September 12, 2012).

- E2 is exempt thanks to the filing of its own tax return.

- E2's capital is held half by an individual P and half by E3 (which cannot benefit from an exemption). Hence, the 25% corresponding to P are not taxable but E3 is liable to tax on the 25% it owns indirectly in the French real estate.

The 3% tax will then correspond to the product of

- the tax base, *e.g.* 100, multiplied by

- the percentage of the capital not benefiting from an exemption: E1 (50%) + E3 (25%) = 75%, multiplied by

- the tax rate of 3%.

The tax amounts to 2.25.

Statute of Limitation and Penalties

In principle, the F.T.A.'s right to reassess the tax is not time-barred until the end of the sixth year following the year of the taxable event, here December 31, 2032, for the 3% tax due for assets owned on January 1, 2026. Thus, the F.T.A. is entitled to reassess a period of up to seven years, including the current year, which can result in a tax amounting to 21% of the value of the underlying real estate assets. In theory, a shorter three-year statute of limitation might be applied, where the entity has actually filed its return and that filing sufficiently revealed the tax liability, without the need for the F.T.A. to carry out any further research. In practice, the F.T.A. almost always argues that further research was necessary to identify the owners in the chain and the amount of tax due. Only a very complete tax return reporting, *inter alia*, the composition of the real estate property – square meters, number of rooms, etc. – could allow to claim the application of the shorter statute of limitation.

A lack of tax return or a late filing triggers the 3% tax to which are added a late-payment interest pursuant to article 1727 of the F.T.C. (currently 0.2% per month), plus a 10% surcharge in case of good faith (*e.g.* late filing) or a 40% surcharge, that is applied automatically and without any need to establish bad faith, where the return is not filed within 30 days from a formal request to file.[10]

Interposed Entities and Procedural Consequences

As mentioned above, the entity at the top of the chain of ownership might be taxed even where the entities below it have benefited from one of the exemptions, since the situation of each entity must be assessed at its own level.[11] Hence, each entity in the chain must file for itself, and every interposed entity is jointly and severally liable for the tax.[12]

"Such joint liability raises a procedural question as to whether every entity that is jointly and severally liable for the payment of the 3% tax should receive all procedural documents."

Such joint liability raises a procedural question as to whether every entity that is jointly and severally liable for the payment of the 3% tax should receive all procedural documents. For a time, lower tax courts held that the F.T.A. was required to

10 Article 1728 of the F.T.C.

11 Court of Appeal of Paris, February 13, 2023, no. 21/01048, *Sté Lupa*.

12 Article 990 F of the F.T.C.

serve documents on every person that was jointly liable for the tax payment in order for the proceedings to be valid. However, the French Supreme Court recently ruled otherwise.[13]

In the case, Satofi, a Luxembourg company, held all the shares of a French partnership, S.C.I. Bayit, which owned real property in France. For the tax years 2013 and 2014, the F.T.A. considered that the exemption based on the filing was not applicable since, even if Bayit was exempted, Satofi failed to file the 3% tax return at its own level. Consequently, the F.T.A. sent a notice of tax reassessment and the corresponding tax notice to Satofi, without sending the same documentation to Bayit, which was jointly and severally liable for the tax.

Satofi won at the appeal stage on the procedural ground, but the French Supreme Court reversed the lower court decision. It distinguished between the person legally liable for the tax (Satofi) from the person only jointly and severally liable for the payment of that tax (Bayit). Since the exempted interposed entities in the chain are not the legal taxpayers of the 3% tax, the Court held that the F.T.A. was not bound to notify them of the procedural acts. As a result, an entity may pay another entity's tax debt, even though it did not take part in the taxation procedure.

This ruling in the case applies for proceedings prior to 2027. Article 102 of the Law no. 2026-534 of June 25, 2026, on the fight against social and tax fraud simplified the procedure, likely at the initiative of the F.T.A., which sought to counter the previous strict case law from the courts of appeal, prior to the Supreme Court ruling regarding Satofi.

Pursuant to the new article 990 FA of the F.T.C., any filing entity that has no permanent establishment in France must now designate, in its 3% tax return, an individual or a legal person with tax residence or its registered office in France that is authorized to receive on its behalf all of the F.T.A.'s communications, procedural documents and notifications relating to verification of the 3% tax or arising from it.

For entities that fail to provide the identity of their new 3% tax representative, the entity nearest to the property in the chain and known to the F.T.A., exempt or not, is deemed authorized to receive the notice on behalf of the actual taxpayer. Consequently, as from 2027, a single person is deemed by law to be authorized to receive all the documentation related to the 3% tax, whether or not officially appointed.

Given the 30-day deadline provided to file the 3% tax return further to the receipt of a formal notice, clarity on who receives the official notice is crucial.

The Seven Exemptions

Article 990 E of the F.T.C. provides for several exemptions, which can be divided into three categories:

- Exemptions 1 to 3, which apply due to the nature of the entity, without any filing requirement.
- Exemptions 4 to 6, which apply based on the location of the seat of the entity and the nature of the entity.

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13 French Supreme Court, Commercial Chamber, May 28, 2026, no. 24-18.404, *Sté. Satofi.*

• Exemption 7, which applies based on the location of the seat of the entity and the fulfillment of specific filing obligations.

Exemptions 1 to 3

Exemption 1 relates to sovereign states, their subdivisions, and international organizations. Each is exempt, as are entities they control by more than 50%.

Exemption 2 relates to entities with shares that are subject to significant and regular trading on a regulated securities market and their wholly-owned subsidiaries. In order to avoid artificial listing, admission alone is not enough, as specified in the F.T.A.'s guidelines.`[14]

> In order for a legal entity whose shares, units and other rights are admitted to listing on a regulated market as provided above to benefit from [this] exemption, two conditions must cumulatively be satisfied:
>
> • its shares, units or other rights must be the subject of significant trading;
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> • its shares, units or other rights must be the subject of regular trading.

Exemption 3 relates to an entity for which the value or its French real estate assets as of the beginning of the calendar year are worth less than 50% of all of its French assets.

For this computation, the numerator is the fair market value of French (and only French) real estate and real estate rights held directly or through interposed entities. Property allocated to business activities other than real estate are not taken into account, whether carried on by the entity itself, by an interposed entity, or by an entity with which it has ties of dependence.[15]

As mentioned above, leasing furnished properties is considered a real estate activity for the 3% tax purposes. The value of the real estate assets allocated to such rental activity must be included in the numerator of the fraction. In comparison, real estate assets allocated to a para-hotel activity could be excluded from being a real estate activity. The business-use carveout is assessed strictly by the F.T.A. and French judges. This is illustrated in the following decisions:

• For a business activity to exist, the company must carry on direct, habitual, and continuous acts required by the business, and must do so with a profit-oriented purpose.[16]

• The burden of proof rests with the entity claiming the tax exemption. A management mandate for furnished rental with para-hotel services, by itself, does not establish the reality of the para-hotel activity. Invoices showing only that the premises were furnished do not prove that the para-hotel services were actually supplied to guests.[17]

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[14] BOI-PAT-TPC-20-10 no. 160 (September 12, 2012).

[15] Within the meaning of article 39, 12 of the F.T.C. See note 8, *supra*.

[16] Court of appeal of Chambéry, May 31, 2022, no. 20/00455, *SNC Carat.*

[17] Court of appeal of Chambéry, September 2, 2025, no. 22/01976, *Isamo Immobilier.*

- Service contracts concluded over three consecutive years with two successive occupiers do not qualify as an active para-hotel business. Providing para-hotel services for a full 12-month term at an annual fee of between €1,251,200 and €1,481,524 and guaranteeing the occupier exclusive use of the property were mainly furnished rentals with only a limited add-on of domestic staff. In sum, the annual lessee was neither a passing customer nor an ordinary customer of the kind contemplated by usual touristic rentals.[18]

The denominator is the fair market value of all the entity's French (and only French) assets. For this purpose:

- An entity cannot take into account both the underlying property and the value of the shares of the controlled company owning the real property. Indeed, that would amount to counting the same value twice and would only unduly dilute the real estate portion.[19]

- A receivable held by a controlling entity from a French entity representing an intercompany financing of the acquisition of the property by a lower-tier entity is not taken into account when measuring total French assets of the controlling entity. Indeed, it would spare controlling companies that buy property through a French company financed by a shareholder's current accounts or loans.[20]

The 50% threshold is applied at the level of each entity in the ownership chain. The F.T.A. guidelines[21] provide an example of the computation. In the example, Entity A owns the following assets: (i) a property located in France with a value of €5.0 million, (ii) receivables from French borrowers totaling €10.0 million, and (iii) all shares of unlisted Entity B, headquartered in France, which owns real property located in France with a market value of €8 million, real property located in the U.K. with a market value equivalent to €20 million, and receivables from French debtors worth €10 million.

The market value of French real estate assets owned directly or through an interposed entity by Entity A is €13 million. The market value of its French assets (French real estate plus French receivables) is €33 million. The U.K. real estate owned by Entity B is ignored. The ratio of 13 to 33 is 39.4%, which is less than 50%. Entity A is not a predominantly real estate entity for purposes of the 3% tax.

Exemptions 4 to 6

Exemptions 4 to 6 relate to entities that, on January 1 of the calendar year maintain their corporate seat in (i) France, (ii) an E.U. Member State, (iii) a State with which France has in existence a convention on administrative assistance against tax fraud and evasion, whether or not an income tax treaty, or (iv) a State with which France has in existence a treaty that contains a nondiscrimination clause covering taxes of any kind, such as found in an income tax treaty or a friendship, commerce, and

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18 TJ Grasse, December 19, 2025, *Saxonia*

19 CA Orléans, March 1, 2012, *Neafil Anstalt.*

20 Cass. com. December 2, 2020, Cacique Investments

21 BOI-PAT-TPC-20-10 No. 100 (September 12, 2012).

navigation treaty.[22] The F.T.A. publishes a list of such treaties. The most recent list was updated as of January 1, 2025, with effect from October 8, 2025.[23]

The term "seat" means the seat of effective management, rather than a registered office identified in the bylaws. In a recent case, a Liechtenstein *Anstalt* having its registered office in Liechtenstein unsuccessfully claimed that it maintained a seat of effective management in Switzerland for the years 2004 to 2007.[24] The case serves as a road map of what not to do when contending that an office located in a treaty partner country is a place of effective management. For the years in issue, the *Anstalt* was properly registered with the Liechtenstein companies' registry and its tax authorities. No document established that the general meetings or the accounts were held in Switzerland. A Swiss-domiciled company was found to be simply a corresponding agent. The nationality and residence of the *Anstalt*'s members and of its chairman were irrelevant *per se* to characterize the location of its seat.[25]

As far as *fiducie*s and trusts are concerned, the F.T.A. applies the presumption that they are deemed to be established in the State that provides the law governing formation and administration rather than the law of the country where the trustees reside.[26] However, a trust claiming the exemption can prove that it is established in another jurisdiction.

"Once the location of seat test is met, three categories of entities are exempt, without any filing requirement."

As of the date of publication of this article, the authors are not aware of any French court decision or F.T.A. guideline that addresses how an exemption based on the location of a company's seat applies with respect to a Non-Cooperative State or Territory ("N.C.S.T.").[27] In other words, is it enough that a convention on administrative assistance exists between France and a State where it is not effectively applied due to a lack of cooperation from the tax authorities of such other State? As mentioned above, pursuant to article 990 E, 3° of the F.T.C., the seat of the foreign entity may be located, *inter alia*, in a country or territory which has concluded with France a convention on administrative assistance in matters relating to tax fraud and evasion. There is no mention that the convention must be effectively applied, or effective in practice, for the seat condition to be satisfied. Nevertheless, the rationale of the exemption is that the F.T.A. must be able to verify with the authorities of the other State concerned the information supplied by an entity established in that jurisdiction. Where a State which has concluded a treaty with France is nonetheless listed as an N.C.S.T., or which does not respond to French requests for information without being already classified as such, it is likely that the convention is not being applied and the F.T.A. cannot fully verify the information on ultimate beneficial owners. It is possible that the F.T.A. may challenge the possibility of exemption.

Once the location of seat test is met, three categories of entities are exempt, without any filing requirement.

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22 Article 990 E, 3° of the F.T.C.

23 BOI-annx-000508 (October 8, 2025).

24 France and Liechtenstein signed a tax information exchange agreement on September 22, 2009. Hence, entities maintain a seat in Liechtenstein are able to claim exemption, provided they comply with certain conditions.

25 Court of Appeal of Aix-en-Provence, March 12, 2025, no. 20/10987, *SA Flanders Establishment.*

26 BOI-PAT-TPC-20-20, no. 50 (October 5, 2016).

27 Article 238-0 A of the F.T.C.

Exemption 4 relates to entities with seat in an eligible State, where its "*share*" of the French underlying property is worth less than €100,000 or, alternatively, less than 5% of the value of that property. The computation applies on a property-by-property where several properties are held by a same entity.[28]

Exemption 5 relates to (i) entities managing pension schemes, (ii) entities recognized of public benefit, and (iii) entities with disinterested management such as foreign charities. In each instance, the holding of French real estate must be justified by the entity's activity or by the financing of such activity.[29]

Exemption 6 relates to (a) open-ended predominantly real estate investment companies ("S.P.P.I.C.A.V.'s"),[30] (b) real estate investment funds ("F.P.I.'s")[31] and (c) foreign legal entities subject to equivalent regulation in the State or territory in which they are established. The equivalent regulation test is applied strictly by reference to the (1) open-ended character of the vehicle, (2) risk-spreading, (3) shares not reserved to qualified investors, (4) redemption on demand, and (5) asset ratios of at least 5% liquidity and at least 60% real estate.[32] Investment funds which do not meet the requirements of Exemption 6 can still claim benefits under Exemption 7, subject to the reporting obligation.

Exemption 7

Exemption 7 relates to the location of the seat of the entity and the fulfillment of specific filing obligations. Until 2026, an entity in an eligible State obtained full exemption from the 3% tax by making a disclosure via a specific Form 2746[33] or undertaking to disclose[34] certain information within 60 days from the date of a request from the F.T.A. Note that Article 102 of the Law No. 2026-534 of June 25, 2026,[35] regarding social and tax fraud, removed the option of undertaking to disclose information if asked by the F.T.A. Thus, effective for 2027 and subsequent years, Exemption 7 requires the filing of the annual return.

The requested information include (a) the location, composition and value of the properties held on January 1 of the relevant year and (b) the identity and address of

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28 BOI-PAT-TPC-20-20 nos. 160 and 180 (October 5, 2016).

29 BOI-PAT-TPC-20-20 no. 190 (October 5, 2016): the real estate shall be considered as such if it generates income allocated to the financing the organization's activity.

30 *Sociétés de Placement à Prépondérance Immobilière à Capital Variable.*

31 *Fonds de Placement Immobilier.*

32 In addition, at least 51% of real estate assets other than shares of listed companies, without exceeding 90%.

33 Article 990 E, -e of the F.T.C.

34 Former article 990 E, -d of the F.T.C. Before the 2026 reform, the undertaking and the annual return were alternative routes, the latter cancelling the former. As specified in a recent French Supreme Court decision (April 1, 2026, no. 25-10.605 *F-B. Sweet Revenge*), a company, that had given an undertaking by a deed of September 8, 2004, and then filed annual returns for 2006 to 2012 of its own initiative, had, by that very step, set aside the specific procedure of the undertaking to disclose. Therefore, if a company properly entered into an undertaking to disclose, filing as a precaution actually changes the procedural regime in a way that is not in the taxpayer's favor.

35 Entered into force on June 27, 2026.

every person or entity holding more than 1% of the shares, units or other rights and the number held by each. An entity that files Form 2746 but reports less than all of its shareholders holding more than 1% of the rights obtains only a partial exemption, limited to the ownership percentage held by the reported persons. Thus, for an entity that does not wish to reveal, or cannot reveal, the identity of its members or beneficiaries, the 3% tax becomes a recurring liability.

If the entity has its seat in a non-eligible State, the 3% tax applies even if anonymity of its members is *de facto* lifted.[36] The F.T.A. wishes to ensure that it can verify information with the local authorities, which generally is not possible in connection with an N.C.S.T.

Online filing is mandatory. Consequently, every entity that must file a report is required to register with the *Système Informatique pour le Répertoire des Entreprises et de leurs Établissements* ("S.I.R.E.N.E."), France's official national business registry. Registration may take several months. Once a "S.I.R.E.N." number is obtained, the entity must subscribe to a professional tax space on the F.T.A. portal. The filing must be made not later than May 15 of the relevant year.

Finally, the F.T.A. guidelines allow for a specific extension of Exemption 7, by considering that the requirements for Exemption 7 are met at the level of the French or foreign company,[37] owning real estate, provided that the said company has duly filed a complete Form 2072 for real estate companies not subject to corporation income tax. That is. the form usually filed by a French S.C.I.[38] The extension does not work, however, for other entities in the ownership chain.

Filing Form 2072 fulfills the criteria for Exemption 7, even though the value of the underlying real estate is not required to be reported. This route is often misunderstood and underused by taxpayers. It protects the filing entity from a possible reassessment based on the allegedly incorrect valuation.

Wealth Tax Compliance Not A Free Pass

The 3% tax is independent from other French taxes. An entity still owes corporate or individual income tax on the income generated by the property and the 3% tax cannot be deducted from the taxable base for those taxes.[39] On the other hand, the 3% tax has been conceived in order to trace taxpayers subject to wealth tax. Therefore, it would not be shocking to consider that if the wealth tax is actually paid with respect to the French real estate held indirectly by individual taxpayers, the 3% tax should not apply, since the opacity of the holding structure did not prevent the collection of the wealth tax.

36 French Supreme Court, Commercial Chamber, October 5, 1999, 97-14.410, *Berenix Finanzetablissement.*

37 As the only criterion laid down by the FTA's guidelines is that of being a real estate company not subject to corporate income tax which rents out its properties or makes them available to its shareholders/members, foreign companies complying with these formalities also appear to be able to rely on this specific extension. An example is a *Monegasque Société Civile Particulière* ("S.C.P.").

38 BOI-PAT-TPC-20-20 no.'s 370 and 380 (October 5, 2016) providing that look-through S.C.I.'s are not required to file Form 2072.

39 Article 990 G of the F.T.C.

Surprisingly, in such situation, the 3% is still due. The F.T.A.'s guidelines are clear that an entity is not subject to the 3% tax only where the F.T.A.'s knowledge of the identity of its individual members subject to wealth tax results from the entity's own communication of that information under Exemption 7.[40]

Taxpayers are required to follow the reporting requirements strictly. Recourse to the courts have not been helpful. In one case, a Luxembourg company owned an apartment in Cannes and reported that it was held by an individual. However, the company's bylaws and various other documents referred to foreign companies in the chain of ownership. The Court held that the conditions for the exemption were not met and the 3% tax was due, even though the named individual timely reported and paid French wealth tax on the value of the shares of the Luxembourg company.[41]

In a recent decision of the Judicial Court of Paris,[42] a wealth tax return was filed by the individual, but the Court held that it did not establish, *per se*, his capacity as owner of the shares for the 3% tax purposes. The Court did not allow the entity to benefit from Exemption 7. Hence, it confirmed that Exemption 7 is earned only through the entity's filings, not by its shareholders/member's tax behavior.

First Time Offender Relief

An entity that could have been exempt from the reporting obligation under Exemption 7, but neither filed nor undertook an obligation to disclose information, may, at the discretion of the F.T.A., be given a 30-day notice to regularize its situation. If the entity comes into full compliance during that period, the tax is not levied and no penalty applies. Should the answer lead to a partial exemption, the tax remains due on the rights whose holders have not been disclosed. Note that where a chain of entities is involved, the F.T.A. may notify only one of the entities in the chain without notifying the others. The 30-day notice to one company should be seen as a warning for the group as the F.T.A. extends relief to entities that regularize their situation on their own initiative.[43] Note this is a one-time-only relief that has its origins in a 2000 ministerial response.[44] As in effect today, (i) the regularization possibility is available only where there has been no previous filing at all, not where the tax returns were filed incomplete or erroneous[45] and (ii) it applies only to the entity's first infringement, for its whole existence.[46]

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[40] BOI-PAT-TPC-40 no. 30 (September 12, 2012).

[41] Court of Appeal of Aix-en-Provence, March 5, 2019, no. 17/07724, *Sté Semiramis Investments*, and French Supreme Court, Commercial Chamber, May 25, 2022, no. 19-17.099. The appeal to the French Supreme Court was dismissed without any examination of the merits.

[42] Judicial Court of Paris, January 16, 2026, no. 25/00910, *Christophorus*.

[43] BOI-PAT-TPC-30 no. 20 (October 4, 2017).

[44] Rép. min. Loncle, National Assembly, March 13, 2000, n° 39372.

[45] Rép. min. Masson, National Assembly, March 7, 2023, n° 4005.

[46] Court of appeal of Caen, February 21, 2023, n° 20/00203, *Sté Paradise Investment Corporation*.

CASE LAW IS UNFORGIVING

Exemption 7, being by far the most often claimed by taxpayers, it deserves specific attention, as the two-page tax return that is simple in appearance hides many pitfalls.

Standard Applied by Courts

The French Supreme Court reads the reporting requirements strictly, as they are a prerequisite for an exemption. The information provided in the tax return must be exact, complete and verifiable, and the entity must be as transparent with the F.T.A. to the same extent that is applicable to a company with its seat located in France.[47]

The burden of proof lies with the taxpayer seeking a tax exemption. Consequently, the taxpayer must be able to produce supporting documentation confirming the veracity of its position. The F.T.A.'s list of acceptable documents include the following:

- Corporate acts filed with the courts or public services of the State of residence of the foreign entity
- Tax returns filed with the foreign tax authorities
- Documents authenticated by a member of a regulated profession recording the allocation and movement of shares / units / other rights together with evidence of the financial flows behind them
- Any other official document issued by foreign administrations[48]

The documentation should have a demonstrable, timely date of issuance in order to prevent the F.T.A. from contending that the documents were prepared after the returns were filed.

The F.T.A. does not need to prove that the return contains errors, only that the proof offered is insufficient. Nor does the F.T.A. need to invite the filing entity to complete an inaccurate answer before refusing the exemption and applying the 3% tax.[49]

This "pursuit of perfection" can lead to particularly harsh rulings:

- Bearer shares buy no indulgence. A company must put in place a way to identify who holds such shares at all times during the relative period.[50] Where a company is unable to identify the holder at all times relevant because, for example, it never implemented a tracking system, that is the company's problem. The F.T.A. is not obliged to seek international assistance, as the F.T.A.'s duty is to examine the evidence presented by the company.[51]

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[47] French Supreme Court, Commercial Chamber, October 18, 2011, no. 10-25.211, *Sté Immofra.*

[48] BOI-PAT-TPC-20-20 no. 570 (October 5, 2016).

[49] French Supreme Court, Commercial Chamber, June 13, 2018, no. 16-24.714 F-D, *Sté Tourism Investments and Consulting.*

[50] French Supreme Court, Commercial Chamber, December 15, 2009, no. 08-20.840, *Sté Erice.*

[51] Court of Appeal of Aix-en-Provence, April 11, 2023, no. 19/15297, *SA Matro.*

- A single detail can result in the loss of the exemption. In one case, a company properly revealed the identity of its shareholder but provided the wrong address. As a result, it lost the exemption even though it later rectified the error.[52]

- The company must prove the reality of the ownership. In a recent decision of the Nice Judicial Court,[53] a company duly filed the Form 2746 naming a sole shareholder with his address in France but the F.T.A. asked how a 27-year-old student came to hold all the shares of a company owning a property worth approximately €10.0 million. The F.T.A. also requested evidence of the financial flows. The explanation was that the purported owner received a gift of €20.0 million from his mother. Neither explanation survived scrutiny. The deed of gift, though translated, had no certain date, having been neither apostilled nor registered in France. The bank statements did not carry the bank's letterhead and showed funds moving between third parties. Nothing established that the declared shareholder personally paid for the shares. The 3% tax applied.

More generally, the reporting obligation concerns not only the identification of the shareholders but also the location, composition, and value of the property. The F.T.A. might refuse to accept the application of Exemption 7 if it considers that any of the information submitted is incorrect, especially with regard to valuation. Indeed, it is not unusual for the F.T.A. to disagree with a valuation of a property supported by a real estate expert opinion in an attempt to assess the 3% tax based on a valuation mistake. A formal valuation by a valuation expert is, in any case, a necessary element of the file in order to proactively address the risk. The authors are unaware of case law on this point. It remains to be seen whether courts would accept such severity where the discrepancy between value advanced by the F.T.A. and the valuation submitted in the tax return is not significant, given the potentially heavy outcome for taxpayers.

"More generally, the reporting obligation concerns not only the identification of the shareholders but also the location, composition, and value of the property."

Exclusion of Nominees

Putting forward a nominee ("*prête-nom*") does not discharge the entity from the obligation to reveal the beneficial owner. In one case, a Swiss company declared its accountant as the owner, when, as nominee, he had no decision making authority and no beneficial interest in the company, since he was only acting as a nominee. The company did not meet the requirements to benefit from the exemption based on reporting.[54]

Foreign Trusts

Foreign trusts are considered by tax authorities as institutions comparable to the French "*fiducie*." Therefore, French real estate held by a trust is within the 3% tax scope even if the trust has no legal personality. The trustee is, in principle, the one who should carry out the reporting and pay the 3% tax for failing to do so.

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52 French Supreme Court, Commercial Chamber, October 2, 2019, no. 17-26.858, *Sté Tiana Real Estate.*

53 Nice Judicial Court, May 26, 2025, no. 23/01740, *Ampezza*.

54 Judicial Court of Draguignan, August 8, 2025, no. 23/00835, *S.A. Belac Handels.*

The F.T.A.'s view is as follows regarding trusts:

> Where the trust, through the trustee or another authorized member, elects to benefit from [the reporting exemption], it must state in form 2746 the following information:
>
> a. the member or members of the trust who are the actual holders of rights over the French real estate property or real estate rights placed in trust, according to an assessment made on a case-by-case basis for each trust by the trustee or the authorized member. As a general rule, and subject to the trust deed, this will be the settlor where the trust is revocable, and the beneficiaries where the trust is irrevocable,
>
> b. and, for information purposes, the other members of the trust.
>
> The information relating to the allocation of rights within the trust must also appear on this declaration.[55]

It should be noted that the broad approach of "members" of the trust to be reported – the settlor, the trustee, and the beneficiaries – is not aligned with the wealth tax rules applicable in the presence of a trust, which never target beneficiaries during settlor's lifetime, irrespective the revocable or irrevocable nature of the trust.

In short, everybody could end up being named but matters become more complex when it comes to indicating the allocation of rights in the case of an irrevocable discretionary trust with several beneficiaries, where no such allocation is provided for by the trust documentation. Such complexity and uncertainty stem from the fact that French tax law, even today, struggles to grasp these Anglo Saxon mechanisms.

The legal uncertainty of provisions in relation to trusts, pointed out by practitioners, have not prevented the French Supreme Court from refusing to refer to the French Constitutional Court a priority preliminary ruling on the issue of constitutionality (*question prioritaire de constitutionnalité*) directed at the imprecision of the terms used by the French Parliament. It held as follows:

> The contested terms "shareholders, partners or other members" of "legal entities: legal persons, bodies, trusts or comparable institutions" appearing in Article 990 E, 3°, (d) and (e) [of the F.T.C.], if they are understood broadly so as to allow all entities liable to be covered by that provision to be encompassed, whatever their legal form, are sufficiently precise for the persons and entities concerned to be identified, if need be by means of an interpretation carried out in the light of the intention of the legislator, which is, with the aim of combating tax fraud and tax evasion, to deter taxpayers subject to the wealth tax from escaping that taxation by creating, in States which have not concluded with France a tax treaty containing an administrative assistance clause, entities which become owners *of* real estate assets located in France.[56]

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[55] BOI-PAT-TPC-10-10 no 120 (September 12, 2012).

[56] French Supreme Court, Commercial Chamber, April 11, 2018, no. 17-21.938, *Fondation Nafond Privatstiftung*.

In light of the broad approach of the French Supreme Court, consideration should be given to amending the Form 2746, which applies to companies to properly explain in an addendum to such form the interpretation of the trust documentation leading to a certain allocation of rights among the settlor, the trustee, and the beneficiaries. Form 2746 is inapplicable when trusts are involved.

Report in Context of a *Fiducie*

The F.T.A. takes the view that a *fiducie* should be considered as a look-through entity. Hence, for the 3% tax purposes, the settlor is deemed the holder of rights over the assets held in the *fiducie* and also bears the reporting obligation.[57]

Those rules extend to foreign entities comparable to a French *fiducie* – other than a trust – which leads to a delicate assessment of comparability of legal systems.

Where There Is No One To Name

Exemption 7 assumes that there is someone to name at the end of the ownership chain. The whole reporting mechanism is built on identifying the holders of more than 1% of the rights. What happens where an entity, by its very nature, has no such holders? The French Supreme Court addressed this problem in 2024.[58]

The case concerned a Liechtenstein foundation which, by its legal nature, had neither shareholders, nor members, nor any other holders, and which was unable to designate with certainty a current beneficiary for each tax year because of a dispute between the potential beneficiaries. The founder died but the foundation could not be wound up because of pending litigation over the ownership of its assets. The foundation, wishing to be perfectly transparent with the F.T.A., named the two parties to the litigation as possible beneficiaries in its returns, namely (i) the American charitable foundation which was to receive the assets once the dissolution could be carried out and (ii) the individual claiming ownership of those assets. No current beneficiary existed.

The French Supreme Court followed the F.T.A.'s analysis and ruled that the choice of a specific structure was made by the person who arranged for the entity to be formed. If there is no one to be named as the current owner, that is a problem for the entity, not for the F.T.A. Although the foundation acted in complete good faith and disclosed the names of the two possible beneficiaries in the proper form, it ended up having to pay approximately €3.8 million for five years involved.

PRACTICAL GUIDANCE

Given that the 3% tax regime still bears many uncertain aspects, with a still evolving case law, it is necessary to analyze two items in order to reassess correctly the 3% tax situation. The first is the entity's situation upon the purchase of (i) the French real estate or (ii) the shares or rights of an entity holding, directly or indirectly, such real estate and any subsequent changes in the ownership chain as regards real estate. The second is to keep track of subsequent developments in the statute, administrative pronouncements, and case law.

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[57] BOI-PAT-TPC-10-10 no 70 (September 12, 2012).

[58] French Supreme Court, Commercial Chamber, May 10, 2024, no. 21-11.230 FS-B, *Fondation Beaux-Arts Stiftung*.

Here are several questions that should be asked and answered each year.

1. **Can the entity be considered as a predominantly French real estate entity for the 3% tax?**

Exemption 3 (non-predominantly real estate company) is very appealing as it is automatic and comes with no other requirements. However, the ratio computation needs to be addressed carefully.

The numerator must include furnished rental activities if they cannot be characterized as para-hotel business. Courts demand evidence of services actually supplied to guests in a manner similar to a professionally run hotel.

The denominator is narrower than the accounting figures might suggest. In the case of a chain of intermediary companies, the value of the shares in intermediaries and loans made to an intermediary company that are used by it to finance the acquisition of real estate or shares in a lower-tier company are excluded. In addition, only French assets are included in the denominator.

2. **Where is the seat of the entity?**

It is necessary to check the location of the seat of effective management, not of the registered office, to determine whether the seat is located in a State which allows Exemptions 4 to 7. It is also necessary to maintain evidence of the State in which the entity is actually managed. This entails tracking the place where (i) in-person board meetings are actually held, (ii) banking relationships are maintained, (iii) persons having signature authority are located, and (iv) accounting records are maintained. A perfectly compliant return filed by an entity that is not in the right State will result in the 3% tax being applied.

3. **Are you ready for developments in the future?**

If Exemptions 1 to 6 are not available, file Form 2746 by the May 15 deadline every year for every entity in the ownership chain that owns, directly or indirectly, French real estate. As from 2027, an undertaking to disclose to provide information upon request no longer entitles a company to an exemption. Client benefiting from an undertaking must be made aware of the annual filing requirement. A foreign entity with no other French tax obligations to be able to file online (i) must register online with S.I.R.E.N.E. in France to obtain a S.I.R.E.N. number and (ii) create a professional tax space on F.T.A.'s website with subscription to the "T.V.V.I." online service, a process slow enough that it should be started at the end of 2026 rather than in the Spring of 2027.

"It is necessary to check the location of the seat of effective management, not of the registered office, to determine whether the seat is located in a State which allows Exemptions 4 to 7."

Wherever an entity can benefit from the administrative tolerance by filing Form 2072 instead of Form 2746, it should do so. That is the preferred route because it avoids disclosing the value of the underlying real estate asset, and thus limiting the possible topics of discussion with the F.T.A. Form 2072 must also be filed online, making the registration to the online tax space a mandatory step.

If the entity is part of a chain, it must coordinate with entities higher up in the ownership chain to ensure that all entities file on a consistent basis.

4. **<u>Who should be disclosed</u>?**

It is necessary to disclose the actual current economic owner and nobody else. The filing should be supported by reliable evidence such as (i) official corporate filings, (ii) documents lodged with a foreign tax authority, (iii) instruments authenticated by a regulated professional, and (iv) proof of the money behind the transfer. Producing only internal documents may indeed not be sufficient for the F.T.A.

An erroneous mention may lead to a reassessment of six years of tax plus the current year. It is thus crucial to have it right as from the beginning.

5. **<u>In which language should the evidence be produced</u>?**

The F.T.A. is only required to examine documents submitted in French. All foreign documents must be translated into French. Where the Latin alphabet is used, a free translation may suffice, but where a different alphabet is used such as Arabic, Cyrillic, Hebrew, etc., it is recommended to call upon a certified translator in order to obtain a sworn translation.

6. **<u>Has a trusted tax representative been appointed</u>?**

Pursuant to new article 990 FA of the F.T.C., a French tax representative is mandatory as from 2027 for entities with no French permanent establishment. It is a practical guard against notices being served, by default, on the nearest known entity in the chain. In the latter case, the other entity receiving an F.T.A. notice must have the resources and internal procedures to forward every communication without delay, since the 30-day window to regularize a first omission runs from receipt of the correspondence.

7. **<u>Are you prepared for the F.T.A.'s reaction to filed documents</u>?**

The compliance file should be assembled and refreshed every year and not hastily reconstructed after the beginning of the discussion with the F.T.A. In this regard, it is recommended to have an appraisal conducted by an expert, updated every third or fourth year, with yearly updates based on the market evolution in between, in order to minimize the risk of disputes with the F.T.A. regarding the value of the property.

8. **<u>As a purchaser, have you taken steps in the acquisition due diligence to limit joint and several liability for the 3% tax of an affiliate of the seller</u>?**

The 3% tax liability is borne by the entity owning real property and its related companies in a chain of ownership. In a share deal, pre-acquisition due diligence should focus on compliance history of the seller and other members of the chain for (i) the six prior years and the year of purchase. In addition, the purchaser may wish to establish whether the one-time free pass regularization has already been used.

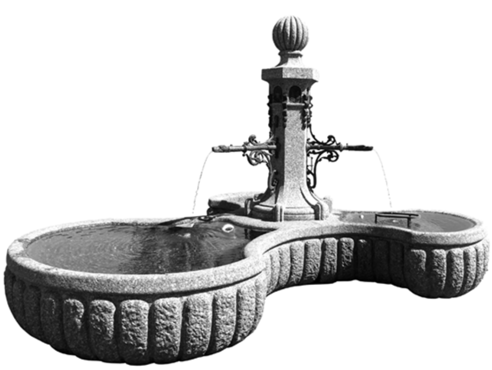
CONCLUSION

The 3% tax is unforgiving. For an entity aware of its obligations and in compliance, it can be quite straightforward, although complicated cases remain. For an uninformed entity, there are a multitude of ways to get it wrong:

- A seat located in the wrong State
- A nominee is indicated in the tax return instead of the actual beneficial owner
- A correct name is given, but with a wrong address
- A valuation is disputed by the F.T.A.
- An undertaking is jeopardized by returns that have been "filed for good measure"
- A structure which, like the unfortunate *Beaux-Arts Stiftung*, has nobody to name

The 2026 reform that first applies in 2027 calls for advance preparation to the 2027 tax season and the possible reassessment of the internal processes with respect to the 3% tax. A few hours of analysis and preparation can save months, if not years, of discussions with the F.T.A. and a significant amount of money.

Those willing to put in the time and effort may take comfort by a passage from a sailor who circumnavigated the globe in a yacht: "The art of a sailor is to leave nothing to chance."[59] Those unwilling to put in the time and effort may wish to recall the lament of the Duke of Clarence: "Me thought I saw a thousand fearful wrecks."[60]



59 Van de Wiele, Annie. *Pénélope était du voyage*. Paris: *Éditions de la Pensée Moderne*, 1954. Translated into English, Penelope Was on the Tour. Translated by N. Johnston. London: Hodder & Stoughton, 1955.

60 *Richard III* (Act 1, Scene 4).