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[TAX UPDATES IN THE REAL ESTATE BUSINESS](#)

This first newsletter is intended to cover a few recent changes in the French real estate tax regime that may affect some of your clients involved in the real estate business

[Sale of a foreign company that holds real estate in France : potential exemption from registration taxes](#)

According to Article 726 of the French Tax Code (FTC), the sale of shares in a foreign company is subject to a 5.09% registration tax.

However, Article 718 of the FTC, which determines the territorial principles applicable to registration taxes, provides that French registration taxes are only due if the asset sold is located in France or if the registration is signed in France

In accordance with a strict application of this article, the "Tribunal de Grande Instance" of Nice (i.e. a first-level regional court) by a decision of September 27, 2007 decided that the payment of such registration taxes was not due. The Court considered that the article defining the territorial principles applicable to registration taxes prevents the application of Article 726 of the FTC, which provides for the application of the 5.09% French registration taxes to transactions on the shares of a foreign real estate company. The French Tax authorities (FTA) did not appeal against this decision. As a result, this is a final judgment.

The FTA has not yet commented on this judgement. Some transactions currently being negotiated may benefit from this exemption, subject to meeting certain strict conditions. However, it might be expected that the applicable regulation on registration taxes may change in the near future.

[France-Luxembourg Tax treaty: does the new protocol close the loophole?](#)

On December 18, the French Parliament passed Act 2007-1815 ratifying the second protocol to the France-Luxembourg income tax treaty. Luxembourg had ratified the protocol earlier, in an Act dated November 21. The provisions of the protocol came into force on January 1, 2008.

Upon its entry into force, the protocol closed the loophole in the provisions of the tax treaty that resulted in the non-taxation in both contracting states of income arising from directly-owned real property. The protocol will clearly allocate the taxation rights on income arising from the use or alienation of real property, to the contracting state in which that property is located.

However, the new protocol should not have any effect on the sale of shares in a Luxembourg company that holds real estate in France. It could be an opportunity to review the present manner of structuring French real estate investments in order to avoid any adverse effects of this new protocol.

3% real estate tax: new filing requirements

Pursuant to Sections 990 D to 990 H of the FTC, all French and foreign legal entities that directly or indirectly own real property situated in France are subject to an annual tax equal to 3% of the fair market value of such properties (as determined on January 1 of the relevant year).

The 2007 Finance Act Amendments Act, which is effective as from January 1, 2008, includes a reform of the 3% tax regime aimed at extending its scope. It is now stated that:

(i) Any French assets held by any intermediary entity will be taken into account in determining whether the parent entity is predominantly invested in French real estate for the purposes of the 3% tax. This new provision is mainly aimed at trusts, which were not previously covered by the applicable regulation.

(ii) The disclosure obligations required for exemption from the 3% tax are less burdensome: the identity of an investor holding less than 1% of the shares or rights in a taxpayer does not have to be disclosed.