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Tax claim opportunities – July 2018

SALE OF THE MAIN RESIDENCE – DEPARTURE FROM / ARRIVAL IN FRANCE

SUMMARY

Income and social taxes relief on capital gains deriving from the assignment of the main residence: tax claim opportunities for the taxpayers who transferred their tax residence before signing the deed of sale

- **Taxpayers can claim tax relief on capital gains deriving from the assignment of their main residence even when they left France before the sale**

A French tax resident selling his main residence benefits from a complete relief of income and social taxes on his capital gains (article 150 U of the French tax code).

However, the situation is different for a taxpayer who transferred his tax residence out of France before signing the deed of sale. In that case, through the combination of articles 244 bis A and 150 U of the French Tax Code, the tax relief on capital gains deriving from the sale of the taxpayer's main residence at the date of sale shall not apply when the transferor no longer qualifies as a French tax resident at the date of the sale.

Although this situation appears regular from the perspective of the French Constitutional Court (*Conseil Constitutionnel*) in so far as residents and non-residents fall into different situations, it does not seem to comply with EU law. Indeed, we believe that this situation constitutes an obstacle to the free movement of capital. Moreover, the Administrative lower court of Versailles (*Tribunal administratif de Versailles*) recently confirmed this analysis.

Capital gains deriving from the following situations may be subject to a tax claim:

- the transferors became non-residents after they put their main residence up for sale
- the sale took place within a normal period starting from the date on which the property was offered for sale
- the sale led to a tax payment as from 2016

- **Tax relief on capital gains deriving from the sale of the main residence can also be claimed by taxpayers who transferred their tax residence to France**

This situation involves taxpayers who put up their main residence located outside of France for sale before moving to France and completing the sale as French tax residents.

We believe that a difference of treatment between two French tax residents solely based on the location of their property, also constitutes an obstacle to the free movement of capital.

Therefore, capital gains deriving from the following situations may also be subject to a tax claim:

- the transferors became residents after they put up for sale their main residence located in a country other than France
- the sale of their main residence (located in a country other than France) took place within a normal period starting from the date on which the property was offered for sale
- the sale led to a tax payment as from 2016

In view of the housing market in London, this situation may concern numerous French people living in London and coming back to France due to the Brexit!

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