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Ownership of real estate in insurance policies and Property Wealth Tax

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The start of May marks the arrival of tax returns and, for the second year, owners of real estate will have to submit their returns for Property Wealth Tax (*Impôt sur la Fortune Immobilière*). This tax is payable by individuals when their net holding of real estate assets exceeds €1,300,000 on 1 January of the current year. This tax applies not only to property held directly, but also to all real estate held indirectly, whether through a company, a fund or through units-linked in a life insurance policy or an capitalization contracts.

Ownership of real estate assets in an insurance policy

Real estate is an asset class traditionally appreciated by investors and is found in many wealth strategies concerned with direct ownership of real estate. Indirect ownership of real estate through funds, companies or specific real estate investment vehicles such as the French OPCI ("Organisme de Placement Collectif Immobilier"), for example, has become more widespread in recent years and is increasingly attracting the interest of investors who are seeking good returns on their investment. Many of these investment vehicles are eligible for life insurance policies, notably in Luxembourg. Indeed, real estate funds are accessible, without limits[1], to policyholders of Luxembourg life insurance policies in Categories C and D according to the rules of the *Commissariat aux Assurances*' (the Luxembourg Insurance Commissioner) circular letter 15/3.

Declaration of life insurance and capitalisation policies for Property Wealth Tax

Real estate held in a life insurance policy or an capitalization policy does not avoid property wealth tax. Indeed, the French Tax Code contains a specific rule for these policies, providing that only redeemable life insurance policies, and only policies expressed in units-linked, qualify. The value of the policies to be declared is not the total surrender value of these policies on 1 January but the representative share of the units of account invested in property and property rights. Also, the insurance companies - and the asset management companies which work with them - must do a lot of work to identify this elusive taxable share. All the shares of companies or units of funds established in France, or outside France, which invest in real estate must be included, even if the policyholders hold them directly outside the insurance policy. The mitigation and exemption measures which apply to property held indirectly outside insurance policies also apply to assets held in unit-linked insurance policies. This concerns in particular the exemption from declaration for units in collective investment undertakings or investment funds in which real estate investments represent less than

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[1] Subject to the specific nature of the fund in terms of liquidity and an analysis of its eligibility

20% of their assets and the taxpayer owns less than 10% of the units. Note that the insurance company is not able to take this exemption into account because of the criterion of the taxpayer's holding threshold. For example, if a subscriber holds less than 5% of the shares of a real estate investment fund in a life insurance policy and also holds 5% of the same fund in a policy taken out with another insurance company and 5% directly in a securities account, he will not be able to benefit from the above-mentioned exemption. Shares in listed real estate investment companies (*sociétés d'investissement immobilier cotées*) are also exempt if the subscriber holds less than 5% of the capital and voting rights.

Whenever the policyholder is a French tax resident, all the real estate held indirectly in his policy must therefore be declared, wherever that property is located, in France or abroad, and provided that the policyholder's total real estate assets amount to more than €1,300,000 after taking into account the deductible debts.

Property Tax and non French tax resident

The tax on real estate wealth is a tax introduced by French tax legislation. However, it applies not only to the worldwide real estate assets of persons who are tax resident in France, but also to the real estate assets located in France of persons who are not tax resident there. Thus, policyholders to Luxembourg life insurance policies not tax resident in France may potentially be affected if their policy holds units invested in French real estate and they meet the threshold conditions for liability. However, this provision should be considered in conjunction with the application of double tax treaties. France is party to numerous tax treaties and some of them contain provisions which relate to a wealth tax which may result in no taxation in France.

In principle, a holding of real estate assets in a life insurance policy is part of an overall wealth strategy: seeking diversification, expecting a higher return, realising capital gains as part of an effective accumulation allowance, transfer of assets, etc. Obviously, this analysis should take account of the impact of tax, but this must not be the only determinant, since life insurance or accumulation policies remain a key method of holding one's investments in an attractive and advantageous manner.

Please feel free to contact us if you would like to have more information on this subject.

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