Income Tax - Scope and Territoriality - Taxable Persons and Tax Residence

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The scope of income tax is determined solely by reference to the concepts of tax residence or source of income.

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Article 4 B of the General Tax Code (CGI) gives a precise definition of domicile inspired by the case law of the Council of State and the criteria adopted by the Organisation for Economic Co-operation and Development (OECD).

The following are therefore considered to be fiscally domiciled in France:

- persons who have their home or main residence in French territory

- those who carry out a professional activity there, whether salaried or not, unless they can establish that this activity is carried out in France on an ancillary basis,

- those whose center of economic interests is in France

- State agents carrying out their duties or assigned missions in a country where they are not subject to personal tax on all of their income.

The implications of this definition are mitigated by the operation of international tax conventions designed to avoid double taxation, the rule of international law always prevailing over domestic law, by virtue of Article 55 of the Constitution of 4 October 1958 and the hierarchy of norms.

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Subject to the application of international conventions, taxpayers domiciled in France are subject to unlimited tax liability and are taxed under the ordinary rules on all their income from French or foreign sources (French General Tax Code, art. 4 A). However, an exception is provided for employees seconded abroad by their company who have retained their primary residence in France (French General Tax Code, art. 81 A , art. 197 C and BOI-IR-RSA-GEO-10).

> *In this regard, income earned abroad is taxable, even if it has not been transferred to France (CE, judgment of 21 March 1960, no. 43229).*

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Taxpayers domiciled outside France are taxable only on their French-source income, which is exhaustively listed by law.

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Finally, under Article 4 bis of the CGI , persons of French or foreign nationality, whether or not they have their tax residence in France, who receive profits or income whose taxation is attributed to France by an international convention relating to double taxation, are also liable for income tax.

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For the application of income tax, France agrees, from a territorial point of view:

- from mainland France, the coastal islands and Corsica;

- overseas departments (Guadeloupe, French Guiana, Martinique, Réunion and Mayotte) subject to certain specificities mainly concerning the calculation of the tax (BOI-IR-LIQ-20-30-10).

On the other hand, it does not include the overseas collectivities of the French Republic, governed by Article 74 of the Constitution of 4 October 1958 (French Polynesia, French Southern and Antarctic Lands, Wallis and Futuna, Saint-Pierre-et-Miquelon and, subject to the special provisions provided for by Article LO.6214-4 of the General Code of Local Authorities (CGCT) and Article LO.6314-4 of the CGCT which provide for a minimum period of residence of five years, Saint-Barthélemy and Saint-Martin) or by Article 76 of the Constitution of 4 October 1958 , nor New Caledonia governed by Article 77 of the Constitution of 4 October 1958 , which have their own competence in tax matters.

Under these conditions, the provisions applicable to metropolitan France and overseas departments do not extend to overseas collectivities.

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The specific rules concerning persons not domiciled in France are set out in BOI-IR-DOMIC .

I. Definition of tax residence

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Article 4 B of the CGI defines the concept of tax domicile, according to personal criteria (see **II § 100 to 150**), professional criteria (see III § 160 to 220) and economic criteria (see IV § 230 to 290).

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Since the concept of "head of household" has been removed from the French General Tax Code (CGI), spouses are placed on a strictly equal footing. Thus, spouses or partners bound by a civil solidarity pact (PACS) are, in principle, subject to joint taxation in France, regardless of their nationality, when one or the other:

- has their home or main residence in France,

- or carries out a professional activity in France, whether salaried or not, unless he/she can justify that this activity is carried out there on a secondary basis,

- or has the center of its economic interests in France.

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If one of the spouses or partners does not meet these criteria, the household's tax obligation only applies to:

- all income of the spouse or partner domiciled in France,

- French-source income of the other spouse or partner (subject to international agreements).

Similarly, if one of the children or disabled dependents does not meet the same criteria, only their French-source income is included in the joint taxation.

Nevertheless, although their foreign-source income is excluded from the tax base, these individuals must be taken into account when determining the applicable family quotient.

II. Personal criteria

A. Home in France

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Generally speaking, home means the place where the people concerned normally live, that is to say the place of habitual residence, provided that this residence in France is of a permanent nature.

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This residence remains the taxpayer's home even if, due to professional requirements, they are required to stay elsewhere temporarily or for most of the year, provided that, normally, the family continues to live there and all its members can be found there (French Council of State, decision of April 23, 1958, No. 37792). Thus, employees temporarily seconded abroad by their company are normally considered to be tax residents of France if they have left their families in the country.

However, refer to BOI-RSA-GEO for special exemption schemes related to the international mobility of employees.

B. Main stay in France

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The requirement of principal residence is deemed to be met when taxpayers are personally and effectively present in France as their primary residence, regardless of the location and living conditions of their family. It is also irrelevant whether the individuals concerned live in a hotel or in accommodation provided free of charge.

1. Principle

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As a general rule, taxpayers who reside in France for more than six months during a given year should be considered as having their principal residence in France.

Thus, the following were considered taxable in France:

- a taxpayer who had stayed at the hotel, in France from May 10 N to February 7 N + 1 (CE, judgment of June 17, 1946, no. 59353);

- a taxpayer who, during the year in question, had resided for three hundred and two days in a hotel room (CE, judgment of July 5, 1961, no. 37182);

- a foreigner who had made frequent stays in our country for several years, the duration of which during any one year had never been less than six months (CE, judgment of February 20, 1961, no. 50475);

- a taxpayer who, during the years in question, had lived in Paris at two successive addresses and had only made a few trips abroad (CE, judgment of February 23, 1966, no. 62460);

- a taxpayer who was a citizen of the United States of America and an employee of an American company whose interests he represented in European countries other than France, and in Middle Eastern countries. This taxpayer had for several years an apartment in Paris where his family resided permanently, as did he himself, except when his professional obligations led him to travel abroad (he did not make a permanent stay abroad and he did not claim to have had a residence there) [CE, judgment of July 16, 1976, No. 94488];

- a foreign student who resided permanently in France from October N to October N + 4 and was only admitted to continue his studies at the University of Algiers from December 6, N + 4. He could thus be regarded as having had his principal place of residence in France during the years N + 3 and N + 4 (CE, judgment of July 4, 1984, No. 33800);

- A person of foreign nationality whose children are enrolled in schools in France and who regularly uses the apartment they own in that country – as evidenced by the amount of telephone calls made for this residence. They must be considered as having their home and principal residence in France and, consequently, their tax domicile (CE, judgment of 10 February 1989, no. 58873).

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Conversely,

- a foreigner who had only made stays in France, where he resided in a hotel, not exceeding sixty-five to seventy days per year, was not regarded as having his principal place of residence in our country (CE, judgment of 22 October 1962, no. 36605).

- The same was true for the chief assembler of a French company, employed by the latter, sometimes in France, sometimes abroad, since for the greater part of the year in question, the person concerned had resided, worked and received his wages abroad, without having in France a personal residence other than that of his parents (CE, judgment of 22 February 1965, no. 51722).

2. Special cases

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A stay of more than six months in a single year is not an absolute criterion. Indeed, the Council of State has refrained from referring to this criterion when the factual circumstances suggested that the taxpayer's principal residence was in France, particularly in cases where, during the years in question, the individual had resided in France for a significantly longer period than the stays made in other countries.

Thus judged with regard to:

- of the principal partner of a French company, who, even though he had not retained a residence at his disposal in France, made frequent and prolonged stays in our country each year due to his duties within the said company. In this particular case, the wife of the person concerned, separated as to property but not subject to separate taxation, had resided in France for several years (CE, judgment of 19 March 1958, no. 38090);

- of a taxpayer who had not resided permanently in any of the many countries where he travelled for the purposes of his profession. The person concerned made periodic stays in France, in a property belonging to his wife, where she and their children were domiciled; he regularly visited the various French houses on whose behalf he prospected foreign markets (CE, judgment of March 24, 1972, no. 75492);

- of a taxpayer who, during the years in question, had resided in France for a period significantly longer than the periods of stay in various foreign countries (CE, judgment of 19 November 1969, no. 75925).

Note : There is no need to adhere to the six-month rule for the taxation of income for the year in which the taxpayer acquires a residence in France or, on the contrary, transfers their residence abroad: taxation is then established in application of the rules set out in this regard by Article 166 of the CGI , Article 167 of the CGI and Article 167 bis of the CGI .

III. Professional Criteria

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The taxpayers primarily carry out a professional activity in France.

A. Engaging in a professional activity

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Pursuant to point b of paragraph 1 of Article 4 B of the French General Tax Code (CGI), persons who carry out a professional activity in France, whether salaried or not, must also be considered as having their domicile in France, unless they can justify that this activity is carried out there on an ancillary basis.

1. Employees and company officers

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For employees, home is determined by the place where they actually and regularly carry out their professional activity.

For the specific case of French employees seconded abroad by their company and of State agents serving abroad, refer to BOI-RSA-GEO-10 , BOI-RSA-GEO-20 and BOI-RSA-GEO-30 .

For corporate officers of a company whose registered office or place of effective management is located in France, this situation implies, in principle, the exercise of the corporate mandate in France.

2. Independent professions

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For persons engaged in a non-commercial profession or deriving their income from industrial, commercial, craft or agricultural operations, it is necessary to determine whether they have a fixed point of attachment, a permanent establishment or an operation in France and whether the majority of their profits are related to it.

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Therefore, the following should be considered as carrying out a professional activity in France:

- A taxpayer of Lebanese nationality who has resided in France for several years, where he rents an apartment, and who continued his commercial activity there during the year in question, either personally or through a foreign company of which he is the master (CE, judgment of January 21, 1963, No. 46547). The individual claimed that the center of his commercial activity was not in France for the following reasons:

- he had made numerous trips abroad during that year,

- he had not been subject to the business license tax,

- some of the business he had undertaken could not have been completed successfully or would have caused him losses;

- a foreigner who owns almost all the shares of a French company and, through this company or its agencies and subsidiaries located outside France, provides exclusive representation for companies mostly of French nationality. The individual also had an apartment in our country where his family resides permanently and where he himself frequently stays (CE, judgment of May 3, 1968, No. 67951).

In this particular case, the taxpayer, originally from a Middle Eastern country and claiming to be its permanent representative for Europe, asserted that he conducted his most important business in a city in Saudi Arabia. In reality, he held the exclusive representation, for the Arab countries in that part of the world, for a number of French manufacturers of equipment and products. Furthermore, he had been a resident of France since 1940 and had not presented his passport.

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However, they do not carry out a professional activity in France:

- a non-salaried representative of various French and foreign fabric houses who exclusively carries out his activity outside French territory. The fact that some French houses have paid him commissions in France and that he has a residence there from which orders from his principals are transmitted to him during his tours, which last seven to eight months a year, cannot allow his representation activity to be regarded as carried out in France (CE, judgment of April 11, 1962, no. 53256);

- a foreigner, representing a foreign company, who only stays in France for sixty-five to seventy days a year (CE, judgment of October 22, 1962, no. 36505).

B. Main activity

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When a taxpayer simultaneously practices several professions or the same profession in several countries, the person concerned is considered to be domiciled in France if he carries out his main activity there.

The principal activity is understood to be the one to which the taxpayer devotes the most actual time, even if it does not generate the bulk of their income. If such a criterion cannot be applied, the principal activity should be considered to be the one that provides the individual, directly or indirectly, with the largest share of their "worldwide income."

IV. Economic criteria

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Taxpayers have the center of their economic interests in France.

This refers to the place where taxpayers have made their main investments, where they have their business headquarters, and from where they manage their assets. It can also be the place where taxpayers have the center of their professional activities or from where they derive, directly or indirectly, the majority of their income.

For holders of corporate offices in several companies whose respective registered offices or effective management are located in different countries, the center of economic interests is sought, according to the specific circumstances of each case, taking into account the links between the corporate offices exercised.

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Thus, case law has established the center of economic interests of the following persons outside of France:

> *- a foreigner residing in France who does not have the seat of his interests and business in our country and derives all his income from properties located abroad (CE, judgment of July 25, 1936, no. 51977),*

> *- a foreigner who does not practice any profession in our country, has invested his capital abroad and makes frequent business trips outside of France (CE, judgment of March 1, 1937, no. 53663),*

> *- a person not engaged in any profession in France. The individual concerned merely managed in France a portfolio of foreign securities deposited abroad (CE, judgment of 8 February 1960, no. 44881),*

> *- a taxpayer of Tunisian nationality, who does not carry out any professional activity in France and does not own any property or assets there from which he derives income. He does not have the center of his economic interests in France, even if he has expressed the intention of reinvesting significant capital from Tunisia in France (CE, judgment of May 16, 1966, nos. 65026 and 65061).*

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> *Finally, in the case of multiple activities or sources of income, the Council of State considers that the center of the taxpayer's interests is located in the country from which the individual derives the majority of their income. Thus, a French citizen who, during the tax year, derived the majority of their income from operating several businesses located abroad cannot, regardless of the extent of the investments they made in France during that year, be considered as having the center of their economic interests in our country (Council of State, decision of January 27, 1971, No. 74995).*

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> *Similarly, a taxpayer who owns several agricultural holdings in France with a total area of 166 hectares and has a large residence there where he has set up a design office employing four employees, but who has derived the greater part of his income from the operation of agricultural estates representing more than 1400 hectares which he owned in Algeria and Morocco, cannot be regarded as having the centre of his interests in France (CE, judgment of 11 March 1970, no. 69588).*

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> *Conversely, a taxpayer must be considered as having the center of their economic interests in France:*

- who has not derived any income from the activity he claims to carry out abroad in two commercial companies;

- who only justifies his absence from France for a period of approximately three months during the three tax years. It is specified that the family of the person concerned had, during the period in question, resided in France, where he himself had funded bank accounts, held management positions and owned interests in several companies established in our country (CE, judgment of April 26, 1968, no. 68408).

An airline pilot who, while retaining his basic assignment in metropolitan France where he had two residences, was called upon by the French company that employed him to serve temporarily in New Caledonia where he stayed for a period of a little over six months which also included the duration of his leave, must be regarded as not having ceased to have the centre of his interests and consequently his real domicile in France (CE, judgment of June 21, 1978, No. 06644).

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A taxpayer must be considered as having had, during the tax period, the center of their interests in French territory and, consequently, as having their domicile in France:

- who arrived in France, accompanied by his wife, his son and the latter's wife, after having sold in Egypt, according to his own statements, "most of his property";

- who acquired an apartment in France for himself and his wife and a second apartment for his son;

- who at the same time took stakes in different businesses by acquiring shares in a real estate company, shares in a public limited bank and shares in a limited liability company, acting as manager of the latter and receiving regular monthly remuneration for this;

- who had funded bank accounts in France.

It is specified that the person concerned had retained a residence and a business office in Cairo (CE, judgment of 25 January 1978, no. 95424).

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A taxpayer must be considered as having transferred the center of their interests to France and as having their domicile in France:

- who had been residing in Nigeria for professional reasons since year N, whose wife and five children have remained in France since year N + 7;

- reduced the activity of the trading company he had founded in Nigeria in year N + 30 due to local political disruptions;

- returned to France where he made significant contributions to a current account in a Parisian art gallery managed by his wife, while also making various investments, notably in the form of real estate purchases (CE, judgment of December 7, 1983, No. 21213).

V. Application of the criteria

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It is noted that the judgments cited in paragraphs 110 to 290, II and III, mostly concern tax years under the former territoriality system. The residency criteria to which they refer also apply under the system established by Law No. 76-1234 of December 29, 1976, which amended the rules of territoriality and the conditions for income tax on French citizens living abroad and other persons not domiciled in France .

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For a taxpayer to be considered domiciled in France, it is sufficient that one of the criteria be met.

Example : Taxpayers who have the center of their professional or economic interests in France are deemed to have their real domicile in our country regardless of other circumstances that may affect their situation.

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This was the judgment in the following cases:

- of a taxpayer of French nationality who, having the centre of his interests in France, had made a significant stay abroad during the tax year (CE, judgment of 13 March 1968, no. 66801),

- of a taxpayer of Swiss nationality who has the main center of his interests in France. The Council of State did not take into consideration the fact that the person concerned was required by Swiss law to be domiciled in that country in order to perform the functions of director of a company (CE, judgment of 20 December 1937, no. 58316).

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The fact that a state sailor is embarked on a ship of the national navy during the tax year is not sufficient to cause the person concerned to lose his tax domicile in France even if he is granted, during all or part of the embarkation period, an allowance which is reserved for personnel called upon to serve outside the metropolitan territory (CE, judgment of 25 January 1985, no. 54902).