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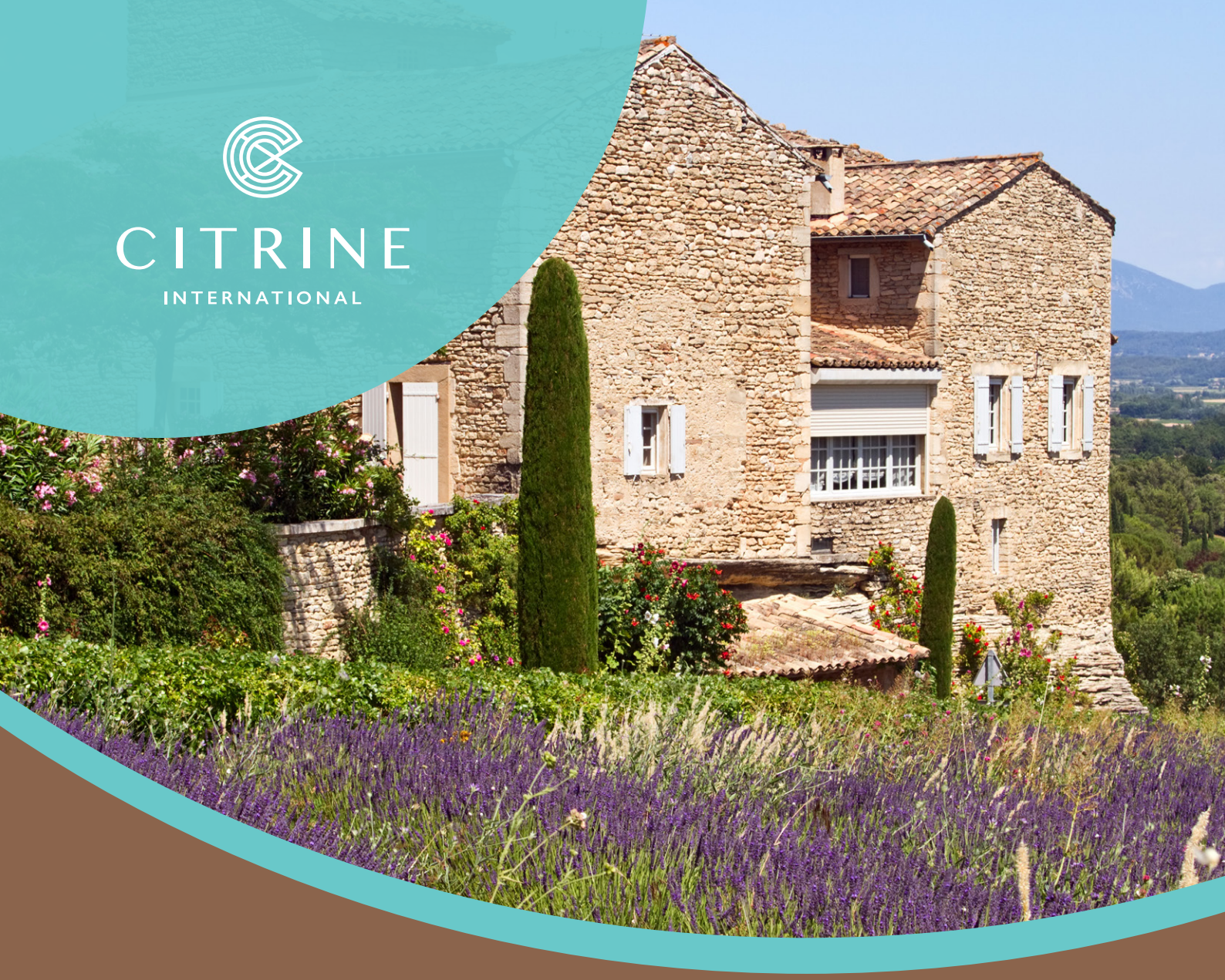

Tax Guide for US Citizens, US Green Card Holders and US Tax Residents buying a property in France

FREE
TAX GUIDE

Your cross-border US / France Tax Experts

SECTION 1

Purchasing Process in France

Are you, as a foreigner, allowed to buy a property in France?

The simple answer to this question is, Yes. Non-French individuals are not restricted from buying a property in France.

However, the one implication your nationality has on the whole purchasing process is the amount of time you are allowed to spend in the European Union (and, therefore, France). For non-EU citizens this will vary according to your residency or visa status. As an American citizen you can enter the EU visa-free for a maximum of 90 days.

Do you need our help...

- establishing your French residency status?
- establishing your US residency status?
- obtaining a French visa?

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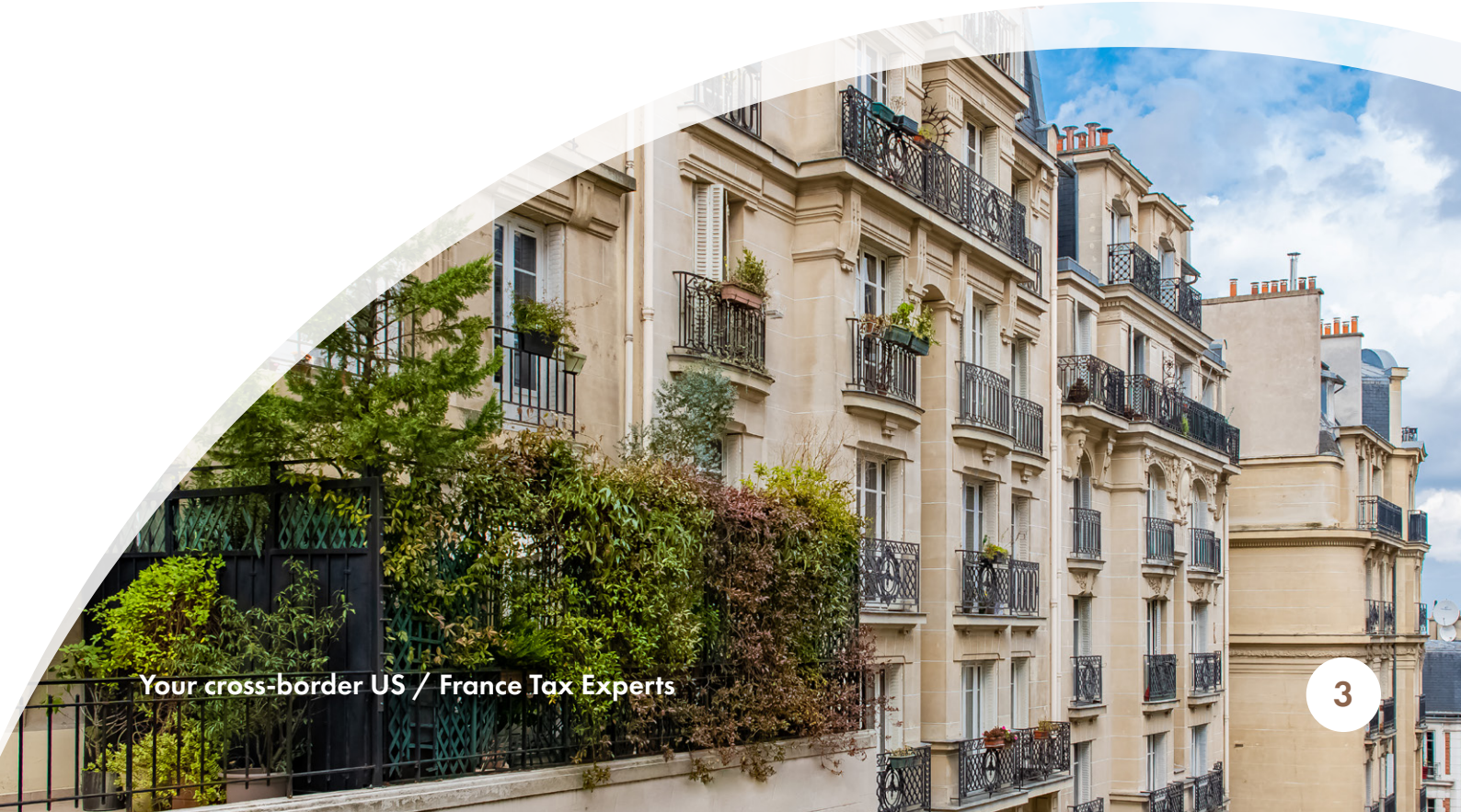


Finding your property

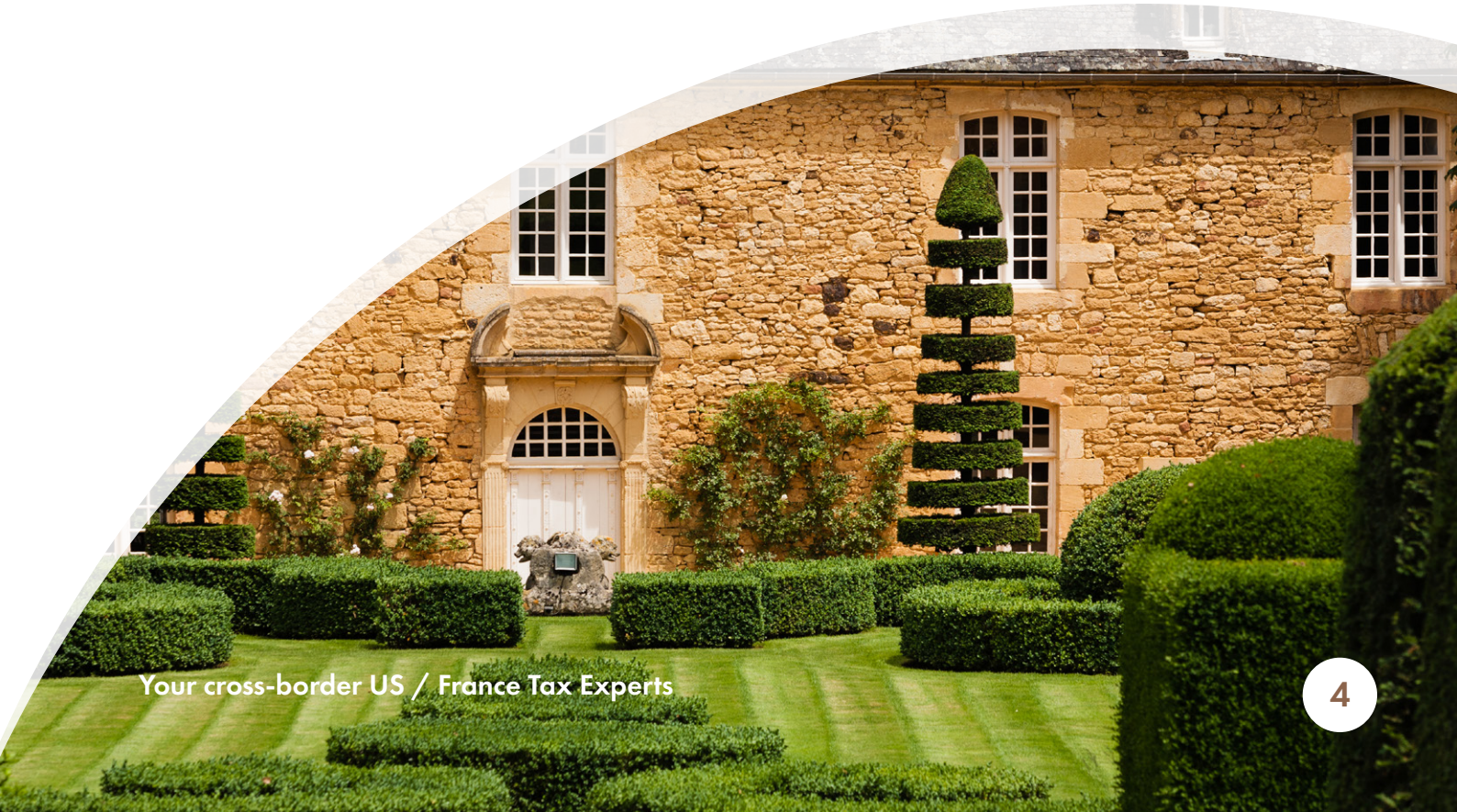
There are many ways to find a French property to buy including consulting online adverts on specialized French property websites, getting the assistance of a real estate agency, word of mouth, etc.

If you find a property that you like, it is important to obtain certain information before proceeding to make an offer:

- Ask for the surface area of the property. This information will allow you to calculate the selling price per square metre and to compare this price to previous transactions in the same area, which you can do on the Demande de Valeur Foncière website
- Request that the seller provide a copy of the property diagnostics. These will inform you about the presence of asbestos or the risk of flooding, for example. It is mandatory for the owner to provide the buyer with up-to-date diagnostics including information about the energy performance and compliance of the property
- Determine the level of condo fees (if it is an apartment)
- Find out the amount of local taxes (property tax, known as taxe foncière, in particular)
- Contact the town hall (mairie) to find out about any building projects that may affect the area; you can ask to see the local development plan (Plan Local d'Urbanisme)

Making an offer

When you are happy that you have found the right property, you will need to negotiate the price with the owner and make an offer.



Signing the preliminary sales agreement

Once your offer has been accepted, a preliminary sales agreement (compromis de vente) will be drafted by the real estate agent or by the seller's notary. You will need to get yourself a notary specialized in real estate to review the document and advise you whether any amendments should be made.

The importance of the notary

A notary (notaire) is a public officer who is under a legal obligation to provide you with complete information about the contract that you are about to sign. His role is to do all the necessary checks to ensure the legality of the sale. He takes care of all the administrative formalities, the calculation of taxes, the disbursement of taxes due, the reporting of real estate capital gains, making notifications of pre-emptive rights to the local town hall, etc.

Even though the seller will always have a notary, it is wise for you to get your own notary to make sure you have been advised properly about the implications of the purchase.

Suspensory conditions

Suspensory conditions (les clauses suspensives) are negotiated between the parties and included in the preliminary sales agreement. If any of these conditions fails, the sale will be cancelled. Examples of such conditions would be the obtaining of a loan, the receipt of a construction permit or getting work done by the seller, etc.

"It is wise for you to get your own notary to make sure you have been advised properly about the implications of the purchase"

The cooling-off period

Once the preliminary sales agreement has been signed, the buyer has 10 days to change his mind without justification and without incurring any penalty. When the cooling-off period is over, the contract becomes legally binding and, unless one of the suspensory conditions of the preliminary sales agreement fails (for example if you are not able to obtain your mortgage loan), there is no turning back.

Paying the deposit

After signing the preliminary sales agreement, and once the cooling-off period is over, you will need to pay to the notary between 5% and 10% of the sale price as a deposit.

If the sale falls through because of one of the suspensory conditions, the buyer receives his deposit back in full. Otherwise, if the sale is cancelled for any other reason, the deposit may be used to compensate the seller.

Obtaining your mortgage

Americans who are not resident in France can find it hard to obtain a French mortgage. However, the main two requirements that the bank will automatically check are that your monthly repayments will not exceed 35% of your total income and whether you have a deposit of at least 10% of the purchase price.

Sign the deed of sale

Once all the suspensory clauses have been completed and the funds have been transferred to the notary, the deed of sale (l'acte authentique de vente) will be signed in the presence of the notary. The keys are handed over, the residual payments are agreed, and the certificate of ownership is provided.

Within the following six months you should receive a copy of the deed of sale from the notary.

Do you need our help...

- **finding out about the local taxes relevant to your purchase?**
- **sourcing an independent notary specialized in real estate?**

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SECTION 2

Residency

Tax residency status

To determine whether you are tax resident in the US and/or in France one needs to look at their respective domestic laws. It is possible to be tax resident in both countries. In which case, the US/France income taxation convention will dictate where you are tax resident for tax treaty purposes.

Tax resident of US

Your US tax residency will depend on several factors. You will be tax resident in the United States if you:

- are a US citizen
- are a US lawful permanent resident (a 'green card holder')
- meet the 'substantial presence test'
- have made certain elections

Substantial presence test

If you are neither a US citizen nor a green card holder, you will be a tax resident of the United States if you meet the substantial presence test for the tax year in question. This test applies a formula to the number of days you have spent in the United States in the current year and the previous two years. If the result is 183 days or more then you are a US tax resident for the current year.

If you are a US tax resident, you will be subject to US income tax on your worldwide income and gains. If you are not considered a US tax resident (also known as a non-resident alien), you would be subject to US income tax only on US-sourced income.

"The US/France income taxation convention will dictate where you are tax resident for tax treaty purposes"

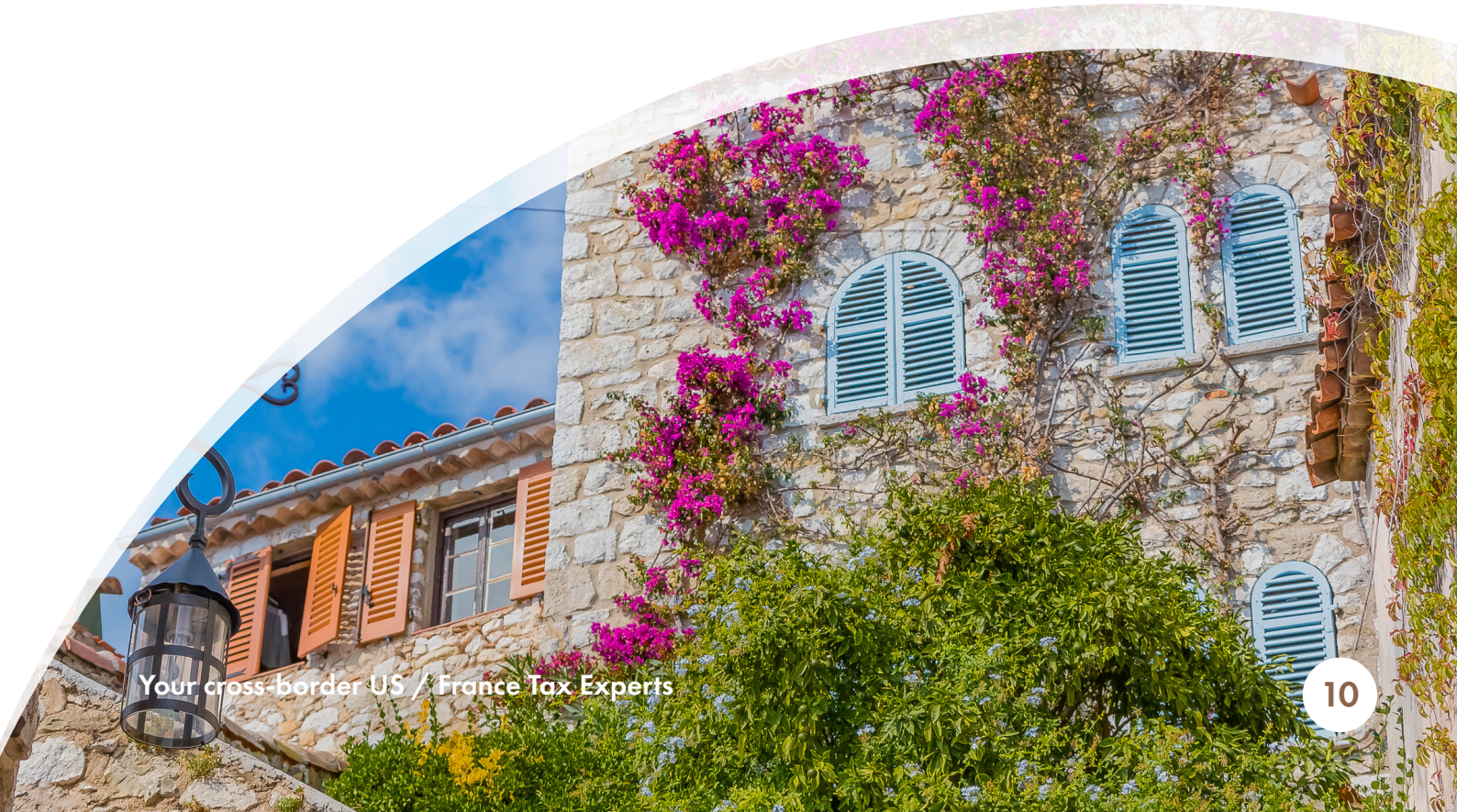
State tax

Each US state has its own residency rules, and these should be analysed separately. Some states determine tax residency primarily on the amount of time you spend there. Other states have a 'domicile' test which means you can be subject to tax if you have a significant connection to that state, even if you no longer live there. In some cases, the state will have rules that incorporate both a days-of-presence test and a domicile test. Some states have no income tax at all (e.g. Florida).

If you are a state tax resident, you are usually taxed on your worldwide income whereas if you are non-resident you are taxed only on your income sourced to that state.

Importantly, many states do not accept federal tax convention provisions.

If you are purchasing property in a foreign country, or you are moving to a foreign country, you must consider the state tax impacts carefully.



Tax resident of France

Whether you become a tax resident of France will depend on several factors:

- The number of days spent in France
- The place where you and your family (spouse and children) usually reside on a permanent basis
- The main place of residence (lieu de séjour principal): if you have stayed in France for more than 183 days, or for less than 183 days but for a much longer period compared to stays in other foreign countries, you will be deemed to have your main place of residence there
- The place where your main professional activity is carried out: Professional activity carried out in France determines tax residence, unless it is carried out on a secondary basis
- The centre of your economic activities: This criterion considers your main investments as well as the place from which you administer your business and assets and the origin of your income. If there is more than one source of income, judges tend to give precedence to the place where you derive most of your income and not to the place where you have made your main investments

Generally, a French tax resident is liable to French tax on their worldwide income and gains regardless of whether their income has been repatriated to France or not. There are limited exceptions, such as under Article 155B which provides tax breaks for impatriates.

If you are not French tax resident, you are taxable only on your French source income and gains.

"A French tax resident is liable to French tax on their worldwide income and gains regardless of whether their income has been repatriated to France"

Treaty provisions

Where you are a tax resident of both France and the United States under their respective domestic tax laws, the 'tie breaker' provisions as described in Article 4(3) of the US / France double taxation convention need to be considered.

The provisions require an analysis of where you have your permanent home, centre of vital interests, habitual abode and nationality. For example, if you have a permanent home in France but not the United States, you will be considered resident in France and a non-resident of the United States for purposes of the convention.

Do you need our help...

- **determining your tax residency status in the US?**
- **determining your tax residency status in the France?**
- **understanding double tax convention provisions?**

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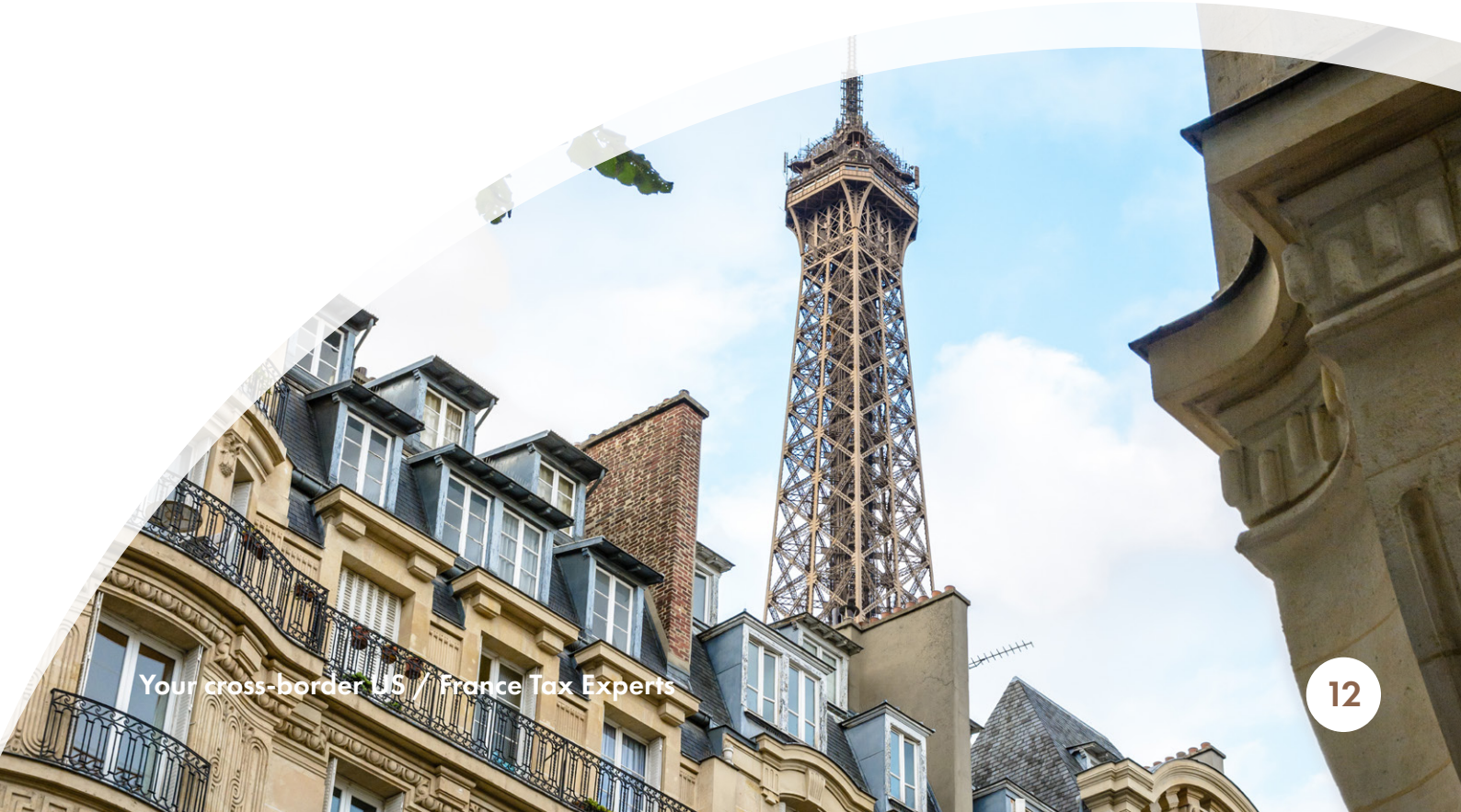


SECTION 3

Rental Income

US Tax consequences of renting your French property

If you are US tax resident, your French rental income will be taxed in the United States. This income may also be taxed at the state level if you are resident in a state with an income tax (see section 2). Additionally, depending on your filing status, your income level, and whether you are a 'real estate professional' you may be subject to a 3.8% US net investment income tax on your net rental income.

You will usually need to report your rental income and expenses each year on Schedule E (Supplemental Income and Loss) in your US Individual Income Tax Return.

Deductible expenses

In computing taxable rental profits, you can deduct against rental income the 'ordinary and necessary' expenses of maintaining, conserving and managing the rental property. Such expenses would include mortgage interest, real estate taxes, utilities, insurance, advertising, maintenance etc. The expenses must also include depreciation of the property rented out. In addition, the 'vacation home rules' will apply if the amount of personal use of the property exceeds the greater of 14 days or 10% of the number of days on which the property is rented. These rules serve to limit the amount of expenses you can deduct due to personal use.

If your deductible expenses exceed your rental income for the year, you will incur a loss. The losses may be available to offset against other 'passive' income, such as rental income from another property. Depending on the level of your involvement in the rental activity and / or the level of your income, you may be able to offset some or all the rental losses against other, non-passive, income. Unused passive losses can be carried over to the next year.

Additional US reporting requirement - Form 8858

A US individual who rents out foreign real estate must file Form 8858 - Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs) where a 'Qualified Business Unit' (QBU) exists. If you maintain separate books and records for the rental property and have a separate bank account into which rent is paid and expenses are met from, it is likely you will be considered to have a QBU.

The purpose of this form is to provide certain information about the rental property, including a profit and loss statement and balance sheet, to the Internal Revenue Service (IRS).

French tax consequences of renting your French property

Under domestic law, income from real estate located in France is taxed in France regardless of your tax residence. The net rental income of a non-resident individual will be taxed according to one of the following methods:

- either by applying a minimum tax rate of 20% or 30% depending on your income level.
- or by applying an average tax rate based on your worldwide income. This requires you to report your non-French income even though it will not be taxed in France. The average rate will be applied to your French source income provided it is lower than the minimum tax rate.

In addition, you will need to pay French social contributions of 17.2% on your net rental income. Separately, under French domestic law there are significant differences between renting a furnished property and renting an unfurnished property.

The main difference between the available tax regimes for such properties relates to the expenses you are allowed to deduct. You may be able to claim deductions at a flat rate depending on your income, or you may be able to use your actual expenses. While you are renting out an unfurnished property on a non-professional basis, you will not be able to take depreciation as an expense. When you take a flat rate expense based on the level of your income, you will not be able to generate losses for tax purposes.

Losses

You can use your rental losses against your global income up to an annual limit of €10,700. The excess can be used to offset future rental income for up to 10 years and to offset future global income (limited every year to €10,700) for up to 6 years.

"Under French domestic law there are significant differences between renting a furnished property and renting an unfurnished property"

Treaty provisions

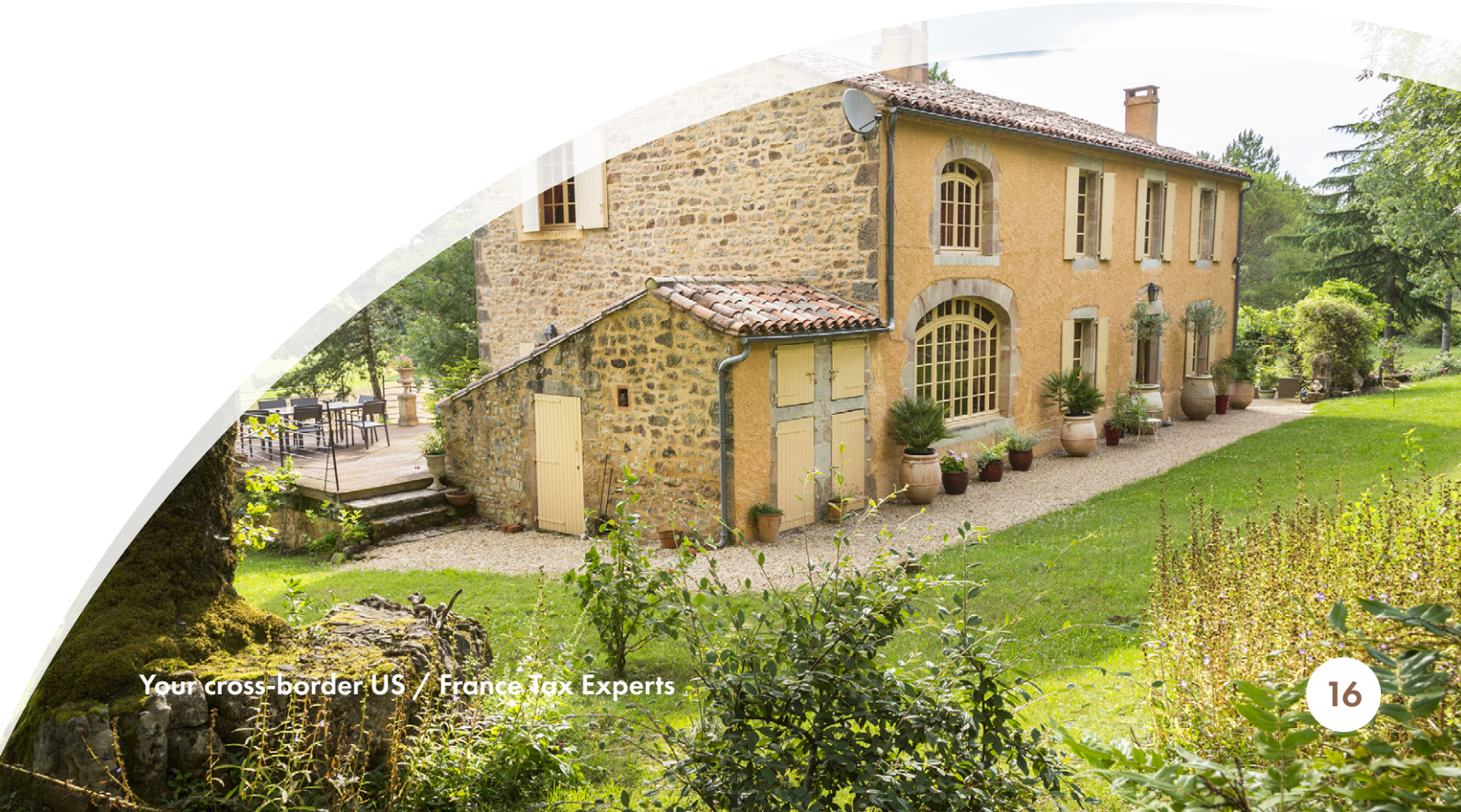
Regardless of your country of residence, you will be taxable on your income from the rental of French properties in France (Article 6 of the US/France double taxation convention). While resident in the United States, you will also be taxable there on the same income. You will be able to avoid double taxation by claiming deductions and/or tax credits on your US tax return. The regimes for determining taxable profits are relatively similar between the two taxation systems, but there are some important differences (standard deduction instead of actual expenses, depreciation, etc.). The taxable income could therefore differ between countries.

Additionally, the timing of French tax payments may be important to ensure that a foreign tax credit is available in the appropriate US tax year.

Do you need our help...

- **reporting your rental income on your French property?**
- **completing and filing your Form 8858?**
- **claiming foreign tax credit against your US liability?**

Click here to request a call with one of our cross-border US / France tax experts



SECTION 4

Capital Gains

Capital gains taxation in the US

If you are going to sell your French property in the future, you will need to think about capital gains and the associated taxes. If you are a US tax resident when you sell the property, you will be subject to US income tax (and possibly state income tax) on your worldwide gains.

Generally, the gain is computed by reference to the proceeds you receive from the sale in excess of amounts you paid for buying the property and improving it (e.g. putting in a new kitchen). Adjustments are made for buying and selling expenses, and also for depreciation claimed while renting the property.

Tax rates

If you are planning to sell your French property within a year, the gain will be considered a short-term capital gain and it will be taxed at normal US income tax rates that can go up to 37%. However, if your intention is to sell the property after a year, the gain will be subject to US tax at rates up to 20%.

The actual tax rates will depend on the total taxable income on your tax return for the year in question. To avoid double taxation, tax credits can be claimed for the French taxes paid or accrued to offset against your US tax liability. Careful timing of French tax payments may be necessary.

Net investment income tax

This additional US tax applies only to investment income, including capital gains, depending on your filing status and 'modified adjusted gross income'. The tax is imposed at 3.8% of net investment income and no foreign tax credits can be claimed to reduce it.

"To avoid double taxation, tax credits can be claimed for the French taxes paid or accrued to offset the US tax liability"

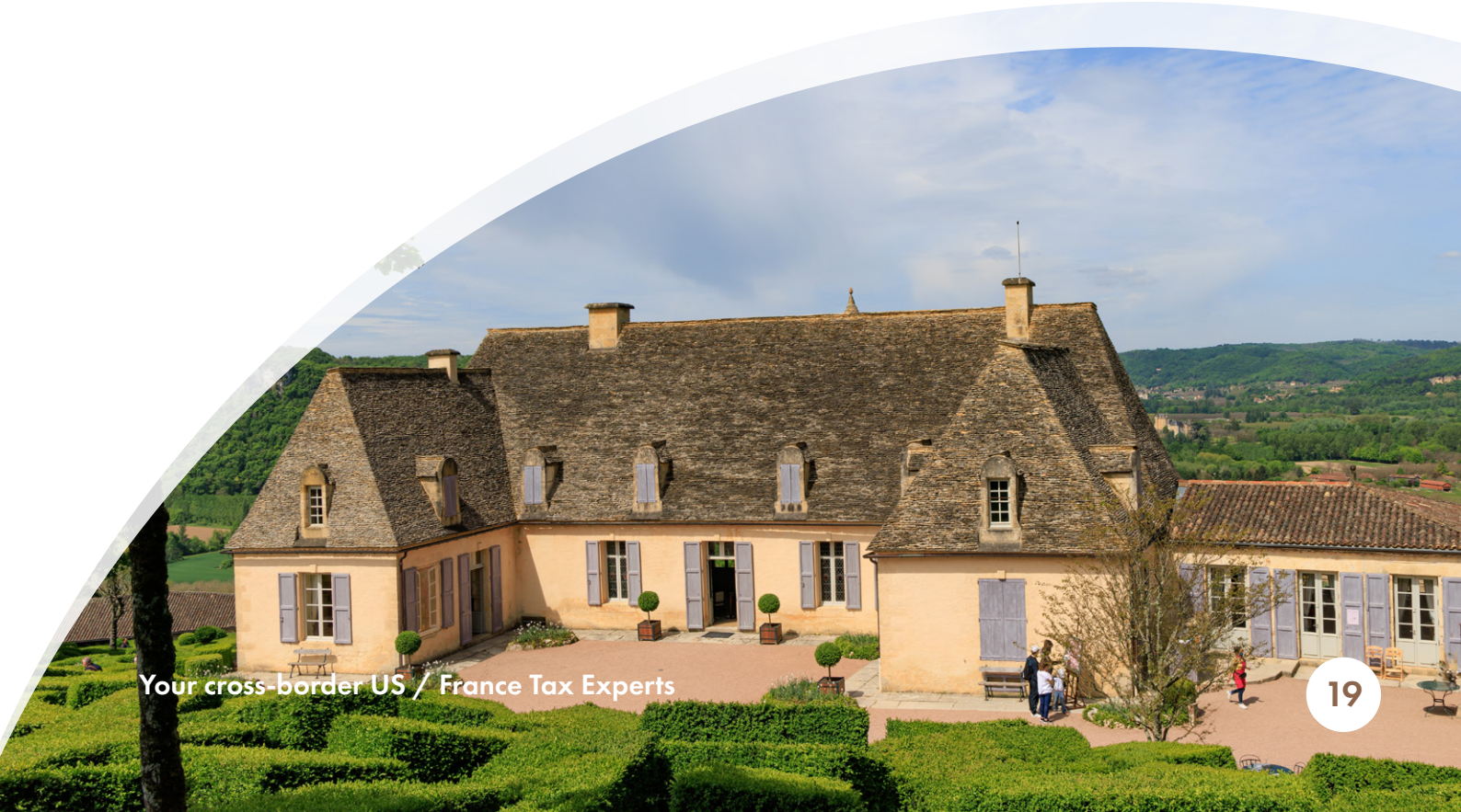
Primary residence and US tax

The US tax code allows for relief from income tax in connection with gains from the disposal of a main home. An exclusion of up to $250,000 of gain is available ($500,000 where married filing jointly) if certain requirements are met. These requirements are mainly that you own the property and you live in it as your main home for at least 24 months out of the previous 5 years. Even if you do not meet these requirements, you could still qualify for a partial exclusion under certain circumstances, for example, a change in workplace location.

If, after applying the relevant exclusion, you still have a taxable capital gain, you can claim foreign tax credits for the taxes paid in France against the US taxes on any unexcluded gain. Net investment income tax may also be due on the taxable portion of any gain.

Depreciation recapture

If you intend to rent your French property, you should be aware of depreciation recapture. US tax law requires you to include depreciation as an annual expense in computing the taxable rental profits. For a French residential property acquired after 2018, depreciation would be calculated on a straight-line basis over 30 years. When the property is sold, all the allowable depreciation is added back in determining the amount of taxable gain or loss (recaptured) and may be subject to US tax at rates up to 25%.



Capital gains taxation in France

Capital gains resulting from the sale of a real estate property located in France will be taxed in France whether you are a resident or not.

Once you calculate your basic capital gain (sale proceeds less cost of acquisition), you can either choose to reduce it with a flat-rate deduction which varies depending on the number of years of ownership, or an itemized deduction of all fees and expenses linked to the purchase/sale of the property, whichever is more beneficial to you.

After calculating your capital gain, a holding period allowance will be applied automatically to determine your taxable gain. This allowance is based on the number of years of ownership. In some cases, capital gains are exempt from taxation. All capital gains are fully exempted from French taxation where the asset has been owned for more than 30 years.

Tax rate

Your taxable real estate gain will be taxed in France at the following rates:

- 19% income tax and
- 17.2% social security contributions
- For capital gains over 50,000, an additional 2% to 6% income tax depending on the amount of the gain.

This means you will pay French tax at a rate from 36.2% up to a maximum of 42.2%.

"After calculating your capital gain, a holding period allowance will be applied automatically to determine your taxable gain"

Primary residence and French tax

If you are French tax resident, and the property is your primary residence, the capital gain should be exempt from French taxation. If you are not French tax resident when selling your primary residence, you may still benefit from a total or partial exemption of the gain. To benefit, there are various requirements as to how long after you cease French tax residency that the sale takes place and the availability of the property to third parties.

Treaty provisions

Article 13(1) of the US / France double taxation convention allows France the primary but not the exclusive right to tax the gains where the seller is resident in the United States and not France under the convention.

A credit against the US capital gains tax for French income tax paid should be allowed. Careful attention may need to be paid to the timing of the French tax payments to ensure the credit is available in the United States in the appropriate tax year.

Do you need our help...

- **calculating taxable capital gains when you sell a property?**
- **understanding how to calculate your foreign tax credits and how to obtain them?**
- **understanding double tax convention provisions?**

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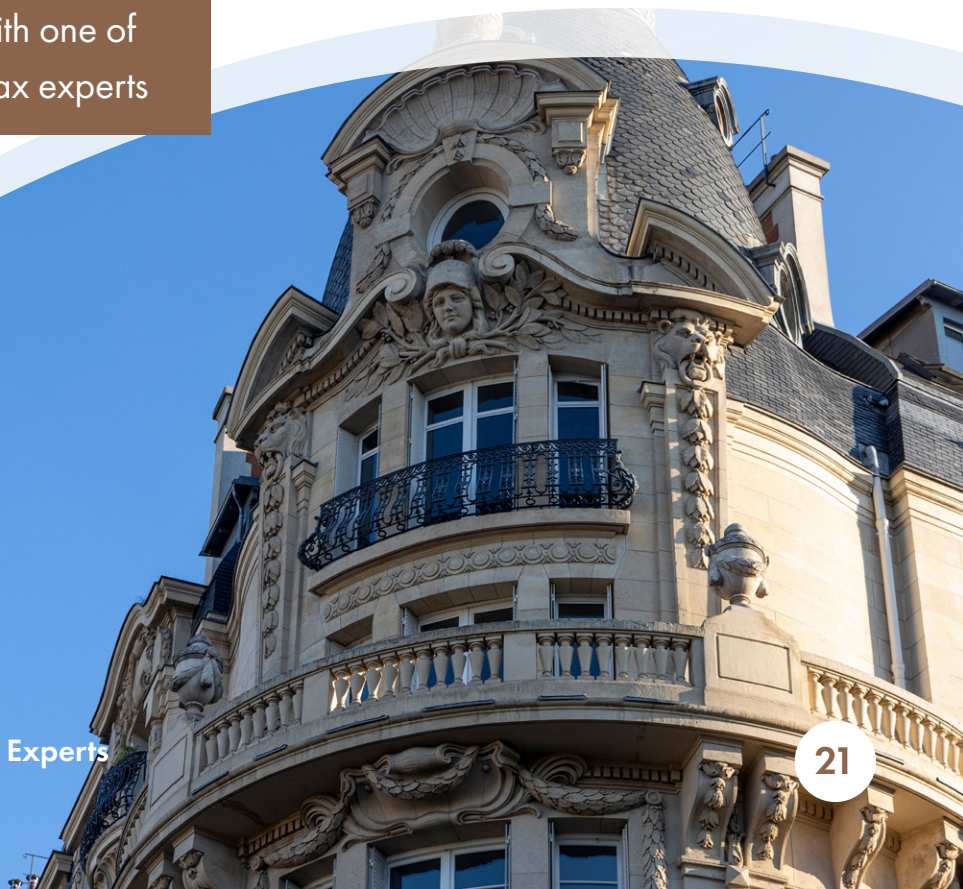


SECTION 5

Other Tax Issues

French wealth tax

Both residents and non-residents in France are subject to a real estate wealth tax (impôt sur la fortune immobilière) if they own net real estate assets valued at more than 1.3 million euros. Non-residents only need to include their real estate assets located in France.

If you own shares/securities in companies that hold real estate (directly or indirectly), the corresponding value counts as a real estate asset.

In order to calculate the net value of a real estate asset you must take the value of the asset at 01 January of the relevant tax year and reduce it by the debts outstanding at 01 January of the same tax year. Only debts strictly related to the cost/actual value of the asset apply here.

Once the net taxable value is calculated, it is submitted to progressive tax bands at rates up to 1.5%.

Exchange rate differences

When a person moves to a foreign jurisdiction, the issue of exchange rates and their impact become more important. Having to deal with transactions in multiple currencies can result in financial complexities and this is, of course, relevant to tax matters.

For US tax purposes any capital gain must be calculated using the applicable exchange rate at the date of acquisition and disposal as well as the dates any other relevant costs were incurred. This can result in mismatches between the quantum of gain (or loss) for French and US tax purposes.

"Having to deal with transactions in multiple currencies can result in financial complexities and this is relevant to tax matters"

Mortgage exchange rate gains

US tax law may recognize an exchange rate gain on the redemption of a foreign loan where, in dollar terms, the loan is cheaper, when redeemed compared to when it was taken out. Such a US taxable gain could be the unexpected consequence of an otherwise tax exempt sale of your main home.

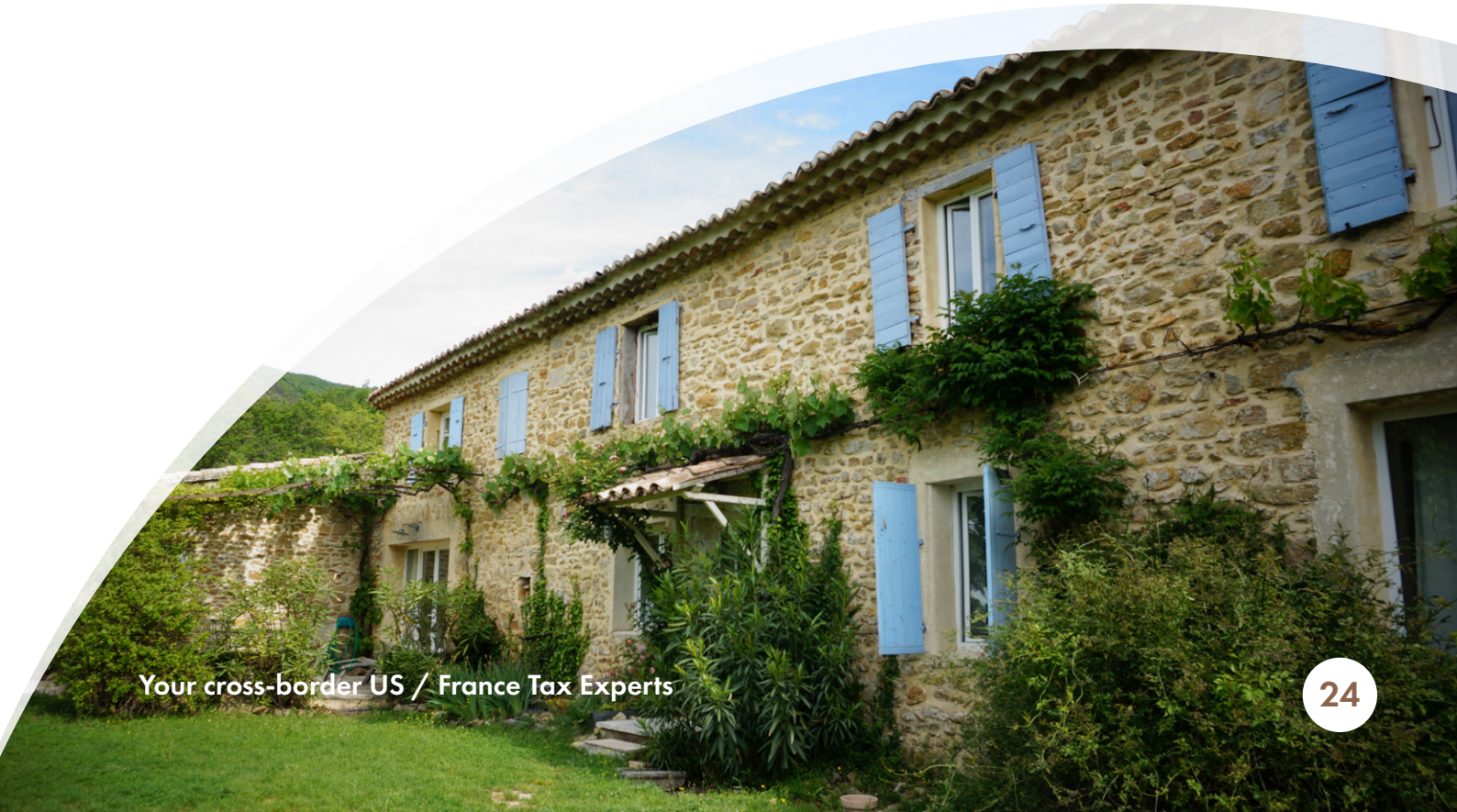
Foreign financial account reporting

If you open a foreign bank account to purchase your property, you may be required to file forms with the IRS to disclose related information. These include FinCEN Form 114 (Report of Foreign Bank and Financial Accounts) known as an 'FBAR' and / or a Form 8938 (Statement of Specified Foreign Financial Assets). It is important to get these right as you can be subject to serious civil and criminal penalties for not filing them or filing them incorrectly.

Foreign tax credits – social security contributions

If you receive French source property income or capital gains from the sale of that property, you will need to pay French social security contributions. If you are a US resident who is not affiliated to compulsory social security systems within the EEA, Switzerland or the United Kingdom you are not exempt from paying the French General Social Security Contribution (CSG) and the Social Security Debt Repayment Contribution (CRDS). On top of the CSG and CRDS you are also subject to a solidarity levy of 7.5%.

However, you are able to claim the CSG and CRDS amounts as a foreign tax credit against your US income tax. The timing of these payments may be important to maximize your foreign tax credit position.



Owning real estate through a company

Corporate entities are a popular mechanism for owning real estate in France. They can confer benefits in the form of lower corporate tax rates compared to personal income tax rates. Established correctly they can also help to reduce French inheritance tax.

However, if you are a US person, you must be aware that this path may cause US tax complications. Firstly, it should not be presumed that an entity that is established as a company in France is automatically treated as a company by the IRS. The United States has its own rules for determining the classification of foreign entities. Even where France and the United States each consider an entity to be similar in structure that does not mean the tax treatment will be in alignment. Double taxation may be the consequence.

Additionally, if the United States does consider a foreign entity to be a company under US tax law then a complex set of rules may apply. Of specific concern are entities that are controlled foreign corporations (CFCs) or passive foreign investment companies (PFICs). Both of these can result in additional compliance, tax, interest and penalty exposures.

French withholding tax

As a non-resident of France, you may be subject to two withholding taxes (prélèvement à la source and prélèvements sociaux) on your French sourced income. The amount of withholding will be indicated once you complete your tax return, and you can choose whether you would prefer to make these payments each month or each trimester on your French Tax account.

"If the United States does consider a foreign entity to be a company under US tax law then a complex set of rules may apply"

Saving clause

The US / France income tax convention contains a 'saving clause' that allows the US to tax its citizens and residents as if the convention had not come into effect. It is important to apply the terms of the convention carefully with this in mind.

Inheritance tax / gift tax

You should be aware that having assets in France or being a tax resident in France can have implications from the perspective of French inheritance and gift rules and taxation. It will be important to review the interrelation of the US and French rules and how they impact you.

Trusts

Trusts are popular devices for managing and protecting wealth. Trust law tends to be weighty and complex, particularly where there is a foreign element. If you are a settlor, beneficiary or trustee of a trust, you could easily trigger inadvertent tax consequences if you move from one country to another. Additional attention needs to be paid if you are thinking of acquiring French property via a trust.

Do you need our help...

- **with anything you have read about in this Tax Guide?**

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We hope you've enjoyed this free tax guide on the French and US tax implications of buying a property in France.

Please note that the guide has been prepared for informational purposes only. It is not intended to provide, and should not be relied upon as, tax, legal or accounting advice. As such, Citrine International cannot accept any responsibility or liability to any person regarding the guide's contents.

If you are in need of tax advice, please click here and you will be contacted by one of our cross-border tax experts who can assist you.

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