

TAX ALERT - May 2023

**Confirmation of the limited scope of administrative tolerance
on regularization for the 3% tax**

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Reminder of the 3% tax mechanism¹

French or foreign legal entities holding real estate located in France, directly or indirectly, and not benefiting from a specific exemption², are exempt from the 3% tax on condition that they declare each year **on May 15 at the latest** (or undertake to transmit) information on the real estate, their shareholders and the interposed companies³.

An administrative tolerance authorizes the "first-time defaulters" to regularize their situation, with the benefit of the 3% tax exemption, by filing the omitted 3% tax returns (subject to their good faith and only for the first request for regularization)⁴.

New Ministerial answer

Further to a decision of principle of the Court of Cassation⁵ distinguishing the omission of the 3% tax returns⁶ and the omissions or errors in the filed 3% tax returns, a new Ministerial answer⁷ confirms that the scope of the administrative tolerance is limited to situations of declarative obligations ignorance in good faith and rejects the possibility of regularizing incomplete or inaccurate tax returns.

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The Ministerial answer MASSON of 2023 reinforces the French Tax Administration in its strict application of the rules which can lead to tax reassessments of 3% based on errors or inaccuracies raised in the information declared on the 3% tax returns.

Although the audit services in practice do not reassess for minor errors/omissions, there is a risk of subjectivity in the appreciation of the errors which should lead taxpayers to be particularly careful with the quality of the information provided on the 3% tax returns.

¹ *Pour mémoire*, the purpose of the 3% tax is not to be paid but to give the administration full knowledge of the chains of ownership up to the shareholders who are individuals possibly liable for the IFI tax (French wealth tax) in order to fight against tax evasion schemes

² In particular, exemptions depending on the nature of the entity (for example, a company ultimately held by a State, or an entity that is not predominantly real estate oriented)

³ Article 990 E of French Tax Code

⁴ Ministerial answer LONCLE n° 39 372 du 13 mars 2000

⁵ Cass. com. 02-20.387 31 janvier 2006 n° 154 FS-PB, *Sté Mediterranean and Pacific Luxembourg finance company* (Bull. IV, n° 20)

⁶ Or commitment provided for by articles 990 E, 2° or 990 E, 3° of French Tax Code

⁷ Réponse ministérielle du 7 mars 2023 (RM Masson JOAN -n° 4005)