

SCI : A LEGAL VEHICLE FOR THE BENEFIT OF NON RESIDENTS

1 INTRODUCTION

There is no restriction concerning the nationality in order to be either a partner and/or a director of a french Société Civile Immobilière (“SCI”).

The non resident and/or foreign partner has no obligation whatsoever to be domiciled in France.

Therefore a person (either an individual or a company) who has no residence in France and is not resident in France may well be a partner and/or a director of an SCI.

2 THE LEGAL STATUS OF AN SCI'S PARTNER

Under french law, the principle is :

2.1 FOR MINORS

Whether or not emancipated, a minor may be a partner an SCI company, even if it remains dangerous due to the fact that the partner is liable for partnership debts indefinitely. An unemancipated minor may however not act personally, and he will be represented by his legal representatives, most of the time his parents.



2.2 PROTECTED ADULTS

It is the same as for the unemancipated minor. He will be represented or assisted by his trustee.

When the partner is abroad you should check its capacity under its national law and not under French Law. Nevertheless an incapacity resulting from foreign law cannot be opposed afterward against a french person who ignored it.

It is recommended to be very careful with protected adults or unemancipated minors, as the intervention of the guardianship judge will be required for any operation of transfer of ownership, mutation or deed of disposal, such as the for instance the consent to a commercial lease.

2.3 CORPORATIONS AND COMPANIES

Civil or commercial foreign companies may well be involved in an SCI. Be careful however to check the credentials of the person who represents the company under its national law. It should also be checked if it enters the corporate purpose of the company investors to acquire interets and shares in a real estate company such as the SCI.

3 WHAT ARE THE RULES GOVERNING FINANCIAL RELATIONSHIPS

Are foreign investments in France liberalized ?

It is appropriate to recall that the funds transferred to an SCI can be allocated in capital or in current account. In both cases the legal regime of foreign capitals will be the applied.

Here is a quick reminder of the regulations regarding foreign investments in France, that should in principle be subjected to three distinct declarations.



3.1 OPERATIONS SUBJECTED TO ADMINISTRATIVE DECLARATION

Are subjected to an administrative declaration, when realized, some of the following operations when performed by foreign investors or by French companies whose capital or voting rights are held for more than one third by foreign companies :

- incorporation of a business
- acquisition of all or part of a french company.
- equity participation in existing french companies.

In all these cases, the declaration must be made on plain paper and has to be addressed to the Treasury Department of the Ministry of Economy, Finance and Industry.

3.2 OPERATIONS EXEMPTED FROM ADMINISTRATIVE DECLARATION

Are exempted from administrative declaration :

- the creation or extension of an existing french activity undertaken by foreign companies or non-resident individuals
- the operations of direct investments in french companies engaged in real estate activities other than the construction of buildings. Ie buildings for sale or for lease, companies with properties to rent.
- acquisition of agricultural land.

3.3 OPERATIONS SUBJECTED TO PRIOR AUTORIZATION

This is very rare in matter of SCI's, as it applies only to investments made on sensitive areas of the economy, such as the sale of weapons for instance.

3.4 OPERATIONS SUBJECTED TO STATISTICAL REPORTING

The following operations are required to be declared :

- **To the French central bank, for operations exceeding 15.000.000 €**
:
 - By which foreign investors acquire at least 10% of the capital or voting rights of a French company, or cross this threshold.
 - Transactions between related companies, such as loans or deposits, which may relate to a SCI within a group of companies.
 - Real estate investments
- **To the Treasury Department of the Ministry of Economy, Finance and Industry, for operations exceeding 1.500.000 €** :
 - The creation or extension of an existing activity of a french company owned directly or indirectly by foreign companies or non-resident individuals.
 - Real estate acquisitions in France by foreign investors.
 - Acquisition of agricultural lands.

4 BASIC TAX RULES

Persons whose tax residence is not in France, whether or not they would have a residence in France, are taxed on their incomes proceeding from a French source.

It should be noted that taxpayers who do not have their tax domicile in France but who own a property in France, are required, at the request of the tax administration, to appoint a fiscal representative in France.



Three types of taxes may be shortly considered :

4.1 INCOME TAX ON RENTAL INCOMES

The SCI owning a leased property in France is subjected to the income tax, on the hand of each partner, (application of the principle of fiscal transparency), except for SCI opting for the company tax.

4.2 WEALTH TAX

Properties held in France by individual taxpayers domiciled outside France are subjected to the wealth tax (except international conventions).

It should be noted that, prior to 2011, non-residents were exempted from taxation on the financial investments made in France (including their current accounts held in an SCI which headquarter is located in France). It is not the case anymore, and the net assets of the SCI is not affected anymore by current accounts.

No,n residents are therefrom fuly taxable for their participation in an SCI which assets consist for more than 50 % of properties located in France, and this on the basis of the full value of such properties.

4.3 TAXATION ON CAPITAL GAIN

It is primarily a regime for individuals, while for the French taxpayers the regime is that of a 10 % rebate per year beyond the fifth year of detention, equivalent to a full exemption after 15 years (otherwise the tax rate is 31.3%).

For taxpayers domiciled outside France, there is a withholding tax of 33 1/3%, and this rate is reduced to 19% for residents of the European Union, including Iceland, Liechtenstein and Norway.

