



AVOCAT FIDUCIAIRE

THE FIDUCIE: WHICH TAXES APPLY?

The main tax rules applying to Fiducies are those provided by Order No 2009-112 of 30 January 2009, pursuant to which most transactions involving assets and rights that are put in Fiducies are tax neutral (French Tax Code, art. 238 quater A to Q):

► TRANSFER OF RIGHTS OR ASSETS PUT INTO FIDUCIES:

The profit or loss, and the gains on these assets or rights are not liable to tax when transferred, whether:

- from the Settlor's estate to the Trustee's estate (*when a FiducieTrust is created*), or from
- the Trustee's estate to the Settlor's estate, when the Fiducie Trust is wound up.

► REVENUE FROM RIGHTS OR ASSETS PUT INTO A FIDUCIE:

During the entire term of the fiducie agreement, the revenue (*income from immovable property, interest, gains, etc.*) generated by the rights or asset put into a Fiducie are taxed in the name of the Settlor, in the same way as if they had been kept in his estate.

NOTE: *when the Fiducie is wound up and the Settlor takes back ownership of the assets he owned before the transfer, the gains or losses he ultimately realises on those assets are determined based on their initial acquisition cost.*

► TAX ON PERSONAL IMMOVABLE PROPERTY ASSETS

The tax on personal property assets (IFI) is payable by the Settlor on the immovable property assets and on the shares in a company holding property that are subject to IFI, even when those assets and shares are put into a Fiducie.

NOTE: *given that the revenue from assets that are put into a Fiducie are tax neutral (see above), the Fiducie does not reduce the Settlor's available income and so does not change his situation regarding the cap on the tax on personal property assets based on income..*



► GIFT TAX AND INHERITANCE TAX

Inter vivos transfers or transfers due to a person's death (gifts and benefits) of rights or assets through a Fiducie is prohibited.

These transfers are therefore subject to transfer tax at the rate of 60% (same rate as that between non family members) and constitute an abuse of right giving rise to a penalty of 80%.

This prohibition and tax treatment does not, however, exclude Fiducies from certain asset transfer transactions, such as:

- ▶ The gift of a Fiducie Agreement (*creation of a management fiducie, followed by the gift of rights held in the Fiducie*)
- ▶ The gift of the responsibility of creating a Fiducie

These solutions are, however, dependent on certain considerations.



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AVOCATS EN DROIT FISCAL

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