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RE: Application of the long-term capital gains *("plus-values à long terme")* **regime to securities not recorded on the balance sheet**

Securities not recorded in the balance sheet may benefit from the long-term capital gains regime, provided that they qualify as fixed assets by their nature and are sold after a period of retention of two years.

Council of State, 9th and 10th Chamber, December 23rd 2016, n° 375746, "Company Cap Gemini".

We know that professional gains are divided into two categories, which determine their tax regime: short-term capital gains, taxed at the common law rate, and long-term capital gains, which follow a particular regime, according to whether the business is subject to income tax *("impôt sur le revenu")* or is subject to corporate tax *("impôt sur les sociétés")*.

The long-term capital gains regime is defined as opposed to the short-term capital gains regime. Thus, Article 39 (3) of the General Tax Code *("Code Général des Impôts")* provides that this regime applies to capital gains which are not subject to the short-term regime. Article 39 (2) specifies that the short-term capital gains regime applies to capital gains from the sale of items acquired or created less than two years ago.

Only the disposal of fixed assets entitles the holder to the long-term capital gains regime. These securities are defined as those that the company intends to hold on a long-term basis or that it is not able to resell at short notice. They are representative of capital shares or long-term investments.

Gains from the sale of marketable securities *("valeurs mobilières de placement")* are taxable as revenue *("produit d'exploitation")* at the standard rate of tax. This category includes securities acquired with a view to realizing a gain at short term.

In addition, if it is not possible to claim the record of the accounting entry, the company must be able to justify the holding period by elements that can give certain date to its acquisition of the security.

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