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Friday 7th July, 2012

The French supplemental Finance Bill for end 2012

The Minefi Press Release of yesterday needs checking carefully:

http://www.economie.gouv.fr/files/DP_PLFR_2012.pdf

Further to the Newsflash, the immediate issues arising from the proposed Bill affecting non-residents owning French Property are :

- ❖ The supplemental ISF charge in addition to the existing rates for 2012. The actual filing mechanisms are now potentially doubled, there will be the normal filing date for net wealth over €1.3 million by 1st September, and a second filing date for the additional contribution by 15th November;
- ❖ The attempt to extend social contributions, which used to be national insurance deficit contributions, to rental income and capital gains paid to non-residents; and
- ❖ The reduction of the allowances in direct line in succession from the earlier higher amount of to €159.325 to €100.000 per child which will certainly affect dispositions of French property on death for those who are not otherwise organised. Inter spouse transfers remain exempt, but the period in which inter vivos gifts to issue can be recalled into the succession and then taxed is increased to fifteen from ten years. This tax treatment is not the same as a Potentially Exempt Transfer but operates to similar effect.

The question of whether a non-resident is technically outside the scope of social security deficit contributions under the relevant EU regulations will need to be addressed. The French



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administration chose to move the deficit compensation levy from NI contributions to an income tax format, and felt unable at that time to charge non-residents for what was effectively a French social security problem. However, this attitude has changed, and it is now clear that the social security deficit contributions will be extended to CGT and rental income. Whether and how this can be correlated to EU law is another matter.

Most of the anti-avoidance measures such as the reversal of the burden of proof where a subsidiary is based in a fiscally privileged tax régime abroad, concern corporates.

The remainder of the anti avoidance and anti evasion methodology will also probably be updated in 2013, as it is clear that the amount of Wealth with French connections in trust, at least in the Channel Islands will be significantly less than the unsubstantiated allegations of IIR and Tax Justice Network. There has yet to be any announcement as to the mechanism of the 990J levy on trustees which would normally be announced soon. The intentions of the Government as to the 990J Levy are not yet clear.

The Press Release sets out the following in greater detail:

❖ The Wealth Tax changes

For those taxpayers whose net wealth exceeds € 1,3 million (therefore liable to ISF for tax year 2012), there is a further exceptional levy on wealth, cumulated at progressive rates identical to that applied for ISF owed from tax year 2011.

ISF paid for 2012, before tax reductions, will be creditable on the amount of this exceptional levy.



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The payment procedure for this exceptional levy on wealth will be as follows:

- Resident taxpayers whose net wealth falls between €1.3 and €3 millions will receive in October, 2012 at the same time as their ISF receipt the amount of their exceptional contribution which will have to be paid by 15th November, 2012, and will not need to take any further steps.
- Resident taxpayers whose net taxable wealth is equal or over €3 million, as well as Non-resident taxpayers whose net wealth exceeds €1,3 million, will receive a specific declaration in October for their exceptional levy which is to be filed with their tax office before 15th November at the latest.

❖ Succession Duty : changes

The current allowance of €159 325 will be reduced to €100 000 for gifts and succession on the share of ascendants and children. The allowance for the handicapped will be maintained at its current level of €159.325 euros.

The period in which gifts, and shared gifts made to such persons can be called back into the succession is increased from ten to fifteen years preceding the decease, together with certain other agricultural gift exemptions and the period at which certain cash gifts obtain exemption.

The allowances will no longer be automatically increased annually by reference to the Income Tax rate index.

These measures will apply to tax points occurring on the coming into force of the *loi de finances rectificative pour 2012*.

- ❖ The extension of Social Contributions to income and capital gains paid to non-residents on Reform of succession duty allowances in Direct Line



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This is by far the most difficult issue:

It is phrased in the following manner:

Les revenus tirés de biens immobiliers (loyers ou plus-values) par des personnes, françaises ou étrangères, qui ne sont pas résidentes fiscales en France sont, en principe, imposés en France. En revanche, ces revenus ne sont pas soumis aux prélèvements sociaux sur les revenus du capital.

La mesure proposée consiste donc à soumettre les revenus que les non-résidents tirent de biens immobiliers situés en France aux prélèvements sociaux sur le capital (au taux cumulé de droit commun de 15,5%), impositions de toute nature distinctes des cotisations sociales.

“Income from immovable assets, (rental or gains) realised by individuals, French or foreign who reside outside France for tax purposes are generally taxed in France. However this income is not subject to social security contributions on income from capital.

The measure proposed will therefore subject income made by non-residents from French situs immovables to social security contributions on [income from] capital (at the cumulated rate of 15.5%), social security contributions being distinct from other taxes.”

These charges will be in addition to the Income tax and Capital Gains Tax charges, not a substitute.

The following examples are given:

Case n° 1. “Mr A, a foreign investor, sells a property he owns in Paris at a taxable gain of €4 million. At present he pays no social contribution. With the proposed measure, he will pay as from tomorrow (7th July, 2012) a social contribution of €620.000”. *The term gain is employed. This appears to be in addition to the one third capital gains tax on the disposal for a non-EU resident and the 19% for an EU resident.*



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Case n°2 : “Mrs. B, a French pensioner, has retired to Morocco. She receives a rent of €100,000 per annum from the properties she owns in France. At present she pays no social security contributions, even though she also has a French pension. Under the proposed measure, she will pay, in the future, €15,500 social security contributions.”

Case n°3 : “Mr. C. has moved to Germany but has continued to work in Strasbourg for a French company. He has let his previous residence and receives €12 000 after charges and expenses. Presently he pays no social security contributions on that despite being affiliated to a French state insurance scheme owing to his employment. Under the proposed measure he will pay €1,860 social security contributions on the rental income.

There are rumours that the French administration will also increase the overall Capital gains rate from 19% to 34.5% , which will mean that other EU residents will be paying significantly more on disposals of French property than in the past.

Whilst this might appear a trivial issue, the switch from a social security contribution to an income tax levy in the space of some 5 years should not go unnoticed by those, who in the administration’s own examples, are already paying French social security elsewhere.

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