TAX NEWS

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TIRARD, NAUDIN

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LEADER

The new socialist government has begun its promised attack on France's wealthy individuals, and more is to come.
Following the many tax measures introduced in 2011 which have already had a substantial impact on the taxation of individuals, both French resident and non resident, the new French Parliament has voted a second amendment to the Finance Law for 2012 concerning individuals. The measures include the application of French social contributions to the property income of non residents, the restoration of the former wealth tax rates, an increase of gift and inheritance taxes and of social security taxes on stock options and bonus shares.
The second amendment to the Finance Law for 2012 also introduces several corporation tax measures, including the introduction of an extra 3% tax on company dividends and the advanced payment of the extra contribution on corporation tax as well as several provisions aimed at banks and oil companies in particular.

INDIVIDUALS

PROPERTY INCOME OF NON RESIDENTS

The second amendment to the Finance Law for 2012 introduces a new measure by which the rental income and capital gains arising on real estate owned by non residents is subjected to social contributions. Prior to this measure, social contributions were only applicable to French residents.
Social contributions will apply to non residents in respect of rental income from their real property in France, with effect from 1st January 2012, and in respect of capital gains on the sale of their real property in France, with effect from the entry into force of the Law, i.e. on 18th August 2012.
As from 1st July 2012 the current overall flat rate of aggregate social contributions is 15.5%. It is, however, expected that the rate will be further increased by the end of 2012 to offset the repeal of the VAT rate increase (see page 2).
As a reminder, rental income earned by non residents in respect of French real property is already subject to the French income tax progressive rates (with a current 41% marginal tax rate for the fraction of net income exceeding €70.830). Capital gains on the sale of French real property by non resident individuals already trigger a withholding tax at the following rates: 19% for residents of European Economic Area (EEA), 33.33% for non EEA residents and 50% for residents of a Non Cooperative State.

ADDITIONAL CONTRIBUTION ON WEALTH FOR THE YEAR 2012

A temporary additional contribution on wealth has been created, with the aim of restoring retroactively for 2012 the wealth tax rates which applied prior to the reform introduced in 2011 (see our Tax Newsletter of July 2011).
A new wealth tax threshold and rates were introduced in 2011, under which individuals were subject to wealth tax if the net value of their assets as at 1st January 2012 exceeded €1,300,000. In such cases taxpayers were liable to a flat rate applicable to their whole estate (from the first euro), up to 0.25% if the assets were worth between €1,300,000 and €2,999,999 and 0.5% if the assets were worth more than that.
The new measure aims at reintroducing the former wealth tax rates retroactively, although the tax threshold remains €1,300,000. The additional contribution therefore applies to all individuals who are liable to wealth tax, by applying to the individual's net assets above €800,000 the former sliding scale, which varies from 0,55% to 1,80%. The amount of wealth tax already paid in respect of 2012 will be fully deductible from this contribution.
Individuals whose net asset value exceeds €2,999,999 will be required to file a tax return by 15th November 2012 at the latest. By way of reminder, French residents are liable to wealth tax on their worldwide assets, whereas non residents are only liable to the tax on their French assets.

GIFT AND INHERITANCE TAXES

Two major changes have been introduced in respect of gift and inheritance taxes, with the aim of mitigating certain favorable provisions from the 2007 major reform of gift and inheritance taxes.
On the one hand, the personal allowance applicable in respect of each heir or donee, in the case of inheritances and gifts for the benefit of parents and children, has been reduced from €159.325 to €100.000. This measure applies with effect from the entry into force of the Law, i.e. on 18th August 2012.
However, the specific allowance of €159.325 relating to disabled heirs or donees has been retained and can be cumulated with other allowances.
On the other hand, the period during which lifetime transfers form part of the transferee's cumulative total is extended to 15 years for everyone, with effect from the entry into force of the Law. This extension applies to ordinary gifts and gifts involving partition (*donations-partage*), including those made across generations, as well as family gifts in cash and the transfer of agricultural land holding entities or shares in such entities. As a result, each heir or donee who is a direct descendant or ascendant will now benefit from a €100.000 allowance for each 15 year period.
Finally, the new measure has removed the general principle that all gift and inheritance tax tariffs and allowances should be updated annually.

MORE IS TO COME

The Finance Law for 2013 which will be unveiled in the autumn is likely to include further tax increases and, in particular, a 45 per cent rate of income tax on earnings above €150,000 and a 75 per cent rate above €1 million.

SOCIAL SECURITY TAXES ON STOCK OPTIONS

A new measure is introduced aiming at increasing the social security taxes due by both the beneficiary of stock-options or bonus shares and his employer, with the purpose also of finding new sustainable financing for the French social protection system.

As a reminder, social security taxes are due on the "fair value" of the bonus shares or options (or on 25% of the value of the stocks subject to the option) at a rate of 14% for the employer and 8% for the employee, with the possible application of reduced rates in certain cases.

As from 1st September 2012, the employer's fraction of social contributions on stock-options and bonus shares will be increased from 14% to 30% and the employee's fraction will be increased from 8% to 10%. The employee is also subject to income tax and social contributions.

TRUSTS WITH FRENCH CONNECTIONS

A brief tax instruction was published on 18th July, which stated that the long awaited Decree providing the details of the trustee's filing obligations will be issued "shortly". The instruction indicates that the declaration of the value of trusts assets as at January 1st 2012 is, for this year only, postponed from June 15th to September 15th 2012. The same deadline also applies for the payment of the specific tax which is due at the rate of 0,5% if the trust assets have not been reported by the settlor or deemed settlor. It should be noted that no additional delay is granted in respect of the wealth tax due by the settlors (or deemed settlors). The due date was June 15th for French residents and will be August 31st for non French residents.

CORPORATION TAX

ADDITIONAL 3% TAX ON COMPANY DIVIDENDS

The second amendment to the Finance Law of 2012 has introduced a new contribution on company dividends, which applies to all dividends distributed by French or foreign companies and entities liable to corporation tax, with the exception of certain investment funds (such as collective investment funds or securitization funds) as well as micro, small and medium enterprises within the meaning of European Union (EU) Law.

This contribution, at the rate of 3%, applies to all amounts qualifying as distributed income under domestic law, except dividends which are withholding tax exempt by virtue of the EU Parent-Subsidiary Directive, dividends deriving from a minimum 10% participation benefiting from the French participation-exemption regime and dividends distributed by certain specific French banking institutions listed in the Law.

This 3% contribution applies to all distributions paid as from the entry into force of the Law, i.e. on 18th August 2012.

TRANSFER OF PROFITS TO TAX HAVENS

The second amendment to the Finance Law for 2012 provides for a reversal of the burden of proof in the case of transfers of tax profits to low-tax States and territories.

The French "Controlled Foreign Companies" (CFC) legislation allows France to tax profits made by direct or indirect subsidiaries of French companies located in so-called "tax favorable jurisdictions" which are controlled by French companies, whether or not such profits have been distributed.

Within the EU, these rules only apply to artificial schemes intended to circumvent French taxation.

For entities outside the EU controlled by French companies, a safe harbor provision provided that the French CFC rules did not apply if the entity carried out an effective activity in its State of establishment, unless the French tax authorities proved that its profits consisted of a certain proportion of passive income.

The new measure reverses onto the French company the burden of proving that the main purpose of the entity outside the EU is not to avoid French taxation.

The new measure also provides that the protective provision no longer applies to entities located in Non Cooperative States, for which the CFC rules will now automatically apply.

OTHER ANTI AVOIDANCE PROVISIONS

The carry forward of net operating losses (NOLs) is to be restricted. Companies that lose their "means of production" before having the majority of their shares transferred will no longer be entitled to carry forward their NOLs. Also a "change of activity" resulting in the loss of NOLs carry forward will now be deemed to have taken place in the case of the acquisition or termination of a business which results in an increase or decrease of at least 50% of turnover.

REPEAL OF VAT RATE INCREASE

The 1.6% rise in the French standard VAT rate of 19.6%, which had been voted by the former Parliament with the aim of financing certain costs of the social protection system, has been repealed. This measure was to have applied from 1st October 2012.

It is therefore expected that the overall rate of aggregate social contributions (amounting to 15.5%) will be increased by the end of 2012.

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