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During the extension of the G20 meeting held on April 2nd 2009 (see Ledgenda No.17), France pursued a repressive tax policy directed towards increasing the powers of the Tax Administration's investigations.

The clearly displayed objective was to obtain financial and asset ownership intelligence in order to improve the control capacity of the Tax Administration in detecting and combating **incidents of tax evasion and tax fraud**.

These fundamentals relate to a large spectrum of activities: VAT carousel fraud, covert professional activities, the holding of undeclared accounts in institutions situated in **non-cooperative States and territories** (NCST), with the setting up in such States of companies, trusts and other fiduciary structures as a means of concealing undeclared assets, or alternatively, the computing of a false profit in the accounts of a subsidiary set up in an NCST through a transfer pricing transaction.

Beyond the risk of criminal action against taxpayers and the different intermediaries advising or organizing them (see Ledgenda No.18),

And beyond the surcharge on French residents, mainly individuals and companies, who engage in such activities with business representatives situated in NCSTs (see Ledgenda No.19 p. 2),

Two measures, which are without doubt the most restrictive, are examined: the **home visit** and the **judicial tax investigation procedure**. For the French Tax Administration this is for **obtaining evidence by introducing a criminal aspect to the tax control** (article p. 3).

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Summary

Obtaining evidence in France through introducing "criminal" aspects to the tax control

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Two methods of investigation come into focus in 2012: the home visit (1) and the judicial tax investigation procedure (2). Without question, these two powers strengthen the effectiveness of the tax control, but they also present important challenges in the way such evidence is gathered (3).

1. The Search and Seizure tax procedure ("*la visite domiciliaire*")

Set out in the provisions of Article L 16 B of Manual of Tax Procedure ("*livre des procédures fiscales*" or "LPF") this **search and seizure tax procedure** was amended by a law of August 4th 2008 following the findings of the European Court of Human Rights of violation of the right to access to a Court (guaranteed by Article 6§1 of the European Convention for the protection of human rights); judgment Ravon vs. France 21/02/2008).

On the order of a Judge, the Tax Administration may be authorized to visit any premises, even private ones, in order to search for evidence of tax evasion by a taxpayer the assessment or payment of income tax, tax on profits or VAT, and ultimately to their seizure.

Both business and private premises may be targeted by this procedure. Tax search and seizures are led by tax officers assisted by a police Criminal Investigation Department officer ("*Officier de Police Judiciaire*" or "OPJ") and recorded in a report which is annexed to an inventory of the documents seized.

The taxpayer, the occupant of the premises, or his/her representative is advised of their right to call counsel of their choice; The OPJ must abide by the rules of confidentiality and the rights of the defence. In practice, the Lawyer is informally given about thirty minutes to be present before the visit proceeds.

Tax officers gather on the spot information and evidence from the tax payer (if s/he is present), or the occupant of the premises or their representative, concerning the activities of the taxpayer, but only after having informed them that their consent is necessary.

On the other hand, when the visit takes place in a company, the employees may not be questioned within the context of the procedure.

According to the Tax Authorities, the tax search and seizure procedure is generally used to obtain evidence of the existence of a professional fraud such as a VAT carousel fraud or in order to expose covert activities. The tax officers therefore make seizures of evidence and related documents "in any form whatsoever" eg. invoice templates, rubber stamps and emails.

However, **confidentiality** must be protected by the OPJ. In practice tax officers seize all the emails and sometimes even the hard disc or all the servers. They then proceed to "sort out" the seized material by means of software programmed to operate through a choice of key words. Any confidential communications are in this way disregarded.

If the on the spot inventory gives rise to any difficulties, the evidence and other documents seized are placed under seal and filed; the occupant of the premises will be present when they are opened in the presence of the OPJ.

The tax search and seizure procedure is recapitulated in **three documents**: the authorization order (delivered by the JLD), the report detailing the methods and implementation of the operation together with its findings, and the inventory of evidence and other documents seized all of which are annexed to it.

These three documents may be referred to the **first president of the Court of Appeal** "*in accordance with the rules of evidence provided by the civil code of procedure*", within a time limit of fifteen days from the date of service. The order delivered by the appeal court may be susceptible to an appeal to the Supreme Court ("*Cour de cassation*") by a process known as an **appeal on a point of law** ("*pourvoi en cassation*") in accordance with the same rules and within the same time limits. The appeal process and the scrutiny of documents must comply with the provisions of the Ravon judgment.

2. The judicial tax investigation

This is a **criminal procedure** which confers on tax officers specially empowered to act certain police powers in order to identify tax frauds classified as "complex" in compliance with Articles 1741 and 1743 of the General Tax Code ("*Code Général des Impôts*" or "CGI") and L 228 of the LPF (see Ledgenda No.19, p 4).

These frauds must be linked to a non-cooperative state and territory (NCST) and perpetrated through the use of an account, a contract or through structures set up in a tax haven but also, in more general terms "*by any other means of misrepresentation*."

The Tax Administration must obtain the permission of the Tax Fraud Commission ("*Commission des infractions fiscales*" or "CIF") before filing a complaint. Taxpayers who have not been informed of such referral or of the opinion delivered are not able to submit their comments. This secrecy is vindicated by the risk of **disappearance of evidence** but also, according to the Tax Administration, by the necessity "*to ensure the effectiveness of the judicial investigation*."

A unit of specialized police officers was established: the national brigade for the suppression of tax fraud ("*Brigade nationale de répression de la délinquance fiscale*" or "BNRDF"), attached to the Home Office and composed of 8 OPJ and 13 **judicial tax officers** ("*officiers fiscaux judiciaires*" or "OFJ", Article 28-2 Code of Criminal Procedure). It can act on the request of a Prosecutor within the context of *flagrante delicto* investigations or preliminary enquiries, or on letters rogatory of an investigating judge when a judicial enquiry is opened.

This procedure is used before a tax control, based on **clear presumptions**, and criminal powers such as communication interceptions (phone tapping), seizures (the implementation of which is more flexible than that of Article L 16 B of the LPF), or detentions, are carried out.

The Minister of the Budget recognized the effectiveness of information obtained through telephone tapping in a press conference on November 24th.

Important point: for the time being this rare procedure is not applicable against a state classified in a category of the NCSTs (Article 238-O of the General Tax Code), if that state has concluded a convention on mutual administrative assistance with France for at least three years and came into force since the time of the offence and if that convention permits access to any information, including banking data, which is necessary for the effectiveness of French tax legislation.

3. Seizures, judicial investigation, and reliability of the evidence

The managing of the evidence obtained by these methods of investigation (1. and 2. supra) must comply with the principle of reliability: the HSBC case.

An employee of the HSBC Private Bank in Switzerland stole, in computerized format, financial data relating to 127,000 accounts opened by the bank (the "listing").
By May 28th 2009, the Authorities were in possession of the information.
They proceeded to process and analyze the listing in order to establish a "**list of 3,000**" French taxpayers.

Between July 9th 2009 and January 12th 2010 the Prosecutor of the Republic for Nice officially sent the information to the Tax Authorities in compliance with Article L 101 of the LPF. Following this the Tax Authorities carried out several search and seizure tax procedure based on suspicions raised from the "listing."

These tax seizures were challenged.
On February 8th 2011, the First President of the **Court of Appeal of Paris** ("*Cour d'appel de Paris*") annulled the home visit order on the grounds that the suspicions were justified by "*illegally obtained evidence*."
Meanwhile, on March 22nd 2011, the First President of the **Court of Appeal of Chambéry** validated another order on the grounds that the evidence "*was clearly transferred within the normal framework of a legal transmission*" (that of Article L 101 of the LPF).
These apparently contradictory decisions have been referred to the Supreme Court which is yet to make a ruling.

This situation gives rise to different observations mainly because of the use of the HSBC listing by the Tax Administration to update the Evafisc file (see p 7), but also to establish a "special monitoring control apparatus": **800 specific controls** were carried out; for the first 350 this generated 160 million euros in tax receipts.

i. The Supreme Court concurred with the judgment of the Court of Appeal of Paris in a decision delivered on January 31st 2012 (Cass. Com., No.11-13097).
It decided that "*after having noted that the documents produced by the Tax Administration in support of its request were from an illegal source resulted from a theft, the First President rightfully quashed the authorization obtained on the strength of these documents, bearing in mind that* ***it did not matter*** *that the Tax Administration was aware of them by* ***a previous transmission of a Public Prosecutor***."
The appeal on a point of law made

by the Public Finances Directorate General (DGFiP) was refused. This case law could also eventually lead to the quashing of the order of the Court of Appeal of Chambéry.

ii. In a seperate case, the Supreme Court considered a similar situation concerning the Competition Authority which is an independent administrative authority. The Court ruled that under **Article 9 of the Code of Civil Procedure**, and of Article 6§1 of the Convention for the Protection of Human Rights and the "**principle of fairness** of the Administration when dealing with evidence" that "*the recording of a telephone communication done without the knowledge of the communicating parties constitutes an unfair process rendering the recording inadmissible as evidence*" (AP January 7th 2011, No.09-14316).

May the endorsement of this case law not apply to a tax seizure where the control is governed by "rules set out in the Code of Civil Procedure?"

Our opinion

1. 232 search and seizure tax procedures were carried out in 2010. In order to avoid widespread use, it is recommended to classify all emails and correspondence covered by the confidentiality rules in separate files clearly identifiable as such.

2. As opposed to civil procedure, parties to a criminal process may produce evidence which has been obtained by illegal or unfair means. The Criminal Chamber of the Supreme Court has validated this position based on the provisions of Article 427 of the Code of Criminal Procedure which relates to the freedom to produce evidence. However, this possibility is not available to public officers "*acting within the course of their employment*" (Cass. Crim., December 16th 1997, No.96-85589).

Thus officers of the BNRDF (OPJ and OFJ) acting within the framework of "judicial investigations" are subject to the principle of fairness of the evidence. The CIF, in 2010, delivered 55 recommendations for the commencement of prosecutions in criminal cases for complex tax fraud tried in a court of summary jurisdiction.

3. In the hypothetical situation where the offence of theft of the HSBC listing were recognized by a judge of a French court of summary jurisdiction, the use of such evidence in proceedings could be considered as an offence of receiving stolen goods.

Residents in France: the Evafisc database and their international accounts

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An order on 25th November 2009 of the Minister for the Budget has led to the creation, by the General Directorate of Public Finances ("*Direction Générale des Finances Publiques*" or "DGFiP"), of a database called "**Evafisc**" on bank accounts held outside France by individuals or legal entities.

The purpose of this database is to collect information "giving rise to the presumption of the holding of bank accounts outside France by individuals or legal entities," and, on this basis, its aim is to prevent and prosecute criminal offences and non-compliance with tax duties and to encourage users to voluntarily declare the holding of such accounts. This database is deployed at the National Tax Investigations Department ("*Direction nationale des enquêtes fiscales*" or "DNEF") and other departments with competence in tax control matters (especially the DNVSF).

Shortly after its deployment, Evafisc was supplied with data provided by the HSBC listing which was obtained by the Administration and, as we have previously seen, its legality has been challenged.

According to the Public Prosecutor for Nice, the decryption of these files would identify 127,000 accounts belonging to 79,000 parties of whom 8,231 are French. The Administration has established a list of 3,000 French tax payers from these files who are now the subjects of special tax controls.

The HSBC has demanded the annulment of the order deploying the Evafisc database, however the Council of State ("Conseil d'Etat") has recently rejected its request on the grounds that in essence:
– it does not disproportionately undermine the rights guaranteed by the European Convention for the Protection of Human Rights;

– nor does it undermine any confidentiality protected by the law (CE, August 24th 2011, No.336382).

Our opinion

As the legality of the Evafisc database has been approved by France's highest Court, the special auditing directorates are therefore able to use it.

However, in order to make more legitimate use of the data compiled, should it not firstly have been gathered by fair means (see previous article).

France extends recovery time and increases fines

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The French tax Administration has a time limit in which to control and rectify taxpayers' tax returns. **This "recovery time"** depends not only on the type of imposition controlled, but also on the stance adopted by the taxpayer.

1. With regard to Personal income tax the recovery time expires usually at the end of the **third year** following the one for which the imposition is due, e.g. for 2011 income 2011 the recovery time will expire on December 31st 2014. **As an exception** to this principle, the time limit will expire at the end of the **sixth year** in two situations:

– when the taxpayer has been exercising a covert activity – i.e. an activity which has not been declared to the Centre for business formalities ("*Centre des formalités des enterprises*") – or an illicit activity;

– when the taxpayer has committed fraudulent acts leading to a criminal prosecution.

It should be remembered that France has already strengthened this approach (LFR of December 30th 2008) by increasing this recovery time from **six to ten years** and furthermore, by introducing a **new exception** to the three year time limit where the French taxpayer has not complied with certain duties of disclosure relating to income from **structures situated in tax havens** or **accounts or assets** held abroad.

In the new case in point, the extension of the recovery time was applicable only when the host country had not signed a convention of mutual administrative assistance with France allowing access to banking information. However the amending Finance Act of December 21st 2011 – the fourth of the year – extended these provisions to all countries without distinction.

When these pieces of legislation **come into force** the situation will be difficult to gauge. For example, the first provision (of 2008) applies "to recovery time coming from expiry after December 31st 2008." Thus, in practice, the years for which the time limit was acquired on December 31st 2008 cannot be the subject of an extension of the time.

On the other hand, for the more recent years, the coming into force of the provisions is progressive and the Administration may exercise its right of recovery in accordance with the requirements summarized in the table below:

Year of tax control		**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
First year that can be controlled (concerned period)	Covert activity or *flagrante delicto*	2003 (6 years)	2003 (7 years)	2003 (8 years)	2003 (9 years)	2003 (10 years)	2004 (10 years)	2005 (10 years)	2006 (10 years)
	Non-compliance with certain duties of disclosure	2006 (3 years)	2006 (4 years)	2006 (5 years)	2006 (6 years)	2006 (7 years)	2006 (8 years)	2006 (9 years)	2006 (10 years)

2. In **wealth tax** matters and **registration duties** (estate, gift tax, etc.) the rules relating to limitation periods have been saved by the reform; "forgotten" according to certain civil servants at Bercy. Let us remember therefore, that the right to recovery applies only in the following way:

– if the taxpayer has filed a tax return disclosing all the imposable assets, the right to recovery applies until December 31st of the **third year** following the date of the filing;

– if the taxpayer has not filed a tax return, or if s/he has omitted to mention certain assets, the right to recovery applies until December 31st of the **sixth year** following the year of imposition.

For example:

In 2011 Mr. X files a tax return for wealth tax ("*impôt de solidarité sur la fortune*", or "ISF") specifying his principal residence at a value estimated as at January 1st 2011; the Administration may rectify this value for wealth tax purposes until December 31st 2014.

In the same tax return, Mr X omitted to mention a share portfolio which he holds abroad; the Administration may rectify this omission until December 31st 2017.

3. Finally, the French legislator has **increased the fines** applicable in cases of non declaration of financial assets held abroad. Thus, the fine of €750 **per year** and **per account** is increased:

– to €1,500 in general cases;

– to €10,000 in cases where the account is held in a State or territory which has not concluded a convention of mutual administrative assistance with France bearing in mind that the fight against fraud and tax evasion allows access to banking information.

Our opinion

The government is supposed to set up a new system in the near future aimed at imposing significantly heavier sanctions in cases of fraud, namely:

– a system of fines proportional to the hidden assets;
– a special fine which could reach €500,000 in cases of reoffending;
– and heavier criminal sanctions.

At the same time as the extension of recovery times and the strengthening of sanctions, the Tax Administration has opened a new regularization office which replaces the Unit set up in 2009 ("*Cellule de régularisation*") and is now called the "**Regularisation Service**." Therefore, France offers its residents a credible alternative for the **formalisation** of their **hidden** assets.

The “Regularization Service”

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As we know, a Regularization Unit (“*Cellule de régularisation*”) for French residents who hold undeclared assets abroad was set up under the aegis of the Minister for the French Budget for a period which ended on December 31st 2009 (see Ledgenda No.17).

It has been decided to maintain this procedure, but from now on in the name of the **Regularization Service** under the responsibility of the subdivision for Tax Control at Bercy.

The procedure is similar to that which was established within the framework of the Unit of 2009, but with slightly less advantageous regularization conditions.

Currently the regularization period covers income tax for the years 2006 to 2010 (five tax returns), wealth tax from 2006 to 2011 (six tax returns) and, if applicable, estate duty and gift tax (any intervening changes post 31st December 2005, with some exceptions).

i. The regularization procedure

The regularization procedure is initiated by filing an **anonymous summary note** indicating the origin of the assets in question, their value on 1st January for the years not statute barred and the amount of income earned for that period.

The filing of the summary note is followed by a period of negotiation of the terms of regularization, at the end of which the “**Service**” formally proposes the conditions for imposition and the increased rate applicable, which the taxpayer may **refuse or accept**.

If the **proposal** is accepted, the taxpayer’s lawyer may subscribe amended nominative statements accompanied by supporting documents including the bank statements.

The completed file will be audited by the “Service” which will remain in contact with the taxpayer and his/her lawyer.

After final confirmation the taxpayer is invited to settle the wealth tax bill and will receive in exchange a **letter of formalization** from the "Regularisation Service."

When necessary, the agreement gives rise to a **tax settlement** concluded with the Regional Department of the Tax Services.

ii. The cost of regularization

As opposed to the Unit of 2009, the "Regularization Service" does not offer a ceiling for interest on late payments (for the record it amounts to 4.8% for a period of one year).

On the other hand, the surcharge of 40% on the tax due is as a rule reduced to:

– 10% for a "passive file" (regularization of an undeclared inheritance);
– 30% for an "active file" (taxpayer has personally been involved in the asset accumulation).

The penalty prescribed for cases of undeclared accounts held abroad is moderate in application; it is imposed on a one-off occasion but is for an increased amount (generally €10,000).

For assets held through a structure domiciled abroad, the "Regularization Service" rigorously applies the provisions of Article 123 bis of the General Tax Code, which imposes a penalty on income, a fixed levy and a surcharge.

Our opinion

Generally, regularization is applied on average at between 10% and 30% of the value of the assets regularized in accordance with three important criteria:

– “passive” or “active” file;
– holding an account directly or through a structure;
– existence or not of non eligible gifts or estate.

In any event, it is in the interest of any taxpayer who questions the relevance of a regularization to request that his/her lawyer prepare a summary note in confidence which will be filed anonymously with the “Regularization Service.”

It is in the light of the Administration’s reply that the taxpayer can assess whether or not to follow the regularization procedure.

Our experience has shown that French residents finding themselves in this situation have every interest in engaging in and evaluating these important issues.

“Rubik”: maintaining Swiss banking secrecy?

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The “Rubik” project consists of proposing a flat rate tax so as to avoid the automatic exchange of information. It is focused on two priorities: the anonymous regularization of assets which have not been taxed and are concealed in Swiss banks together with the tax due on assets and capital gains.

Tax will be withheld at source in Switzerland, for the past as well as the future.

Agreements were initialed in August with Germany and the United Kingdom and should be signed this winter, before the ratification procedure (entry into force is anticipated for the beginning of 2013). They aim to reconcile two objectives: preserving the “sphere of privacy” for clients of Swiss financial institutions (and banking secrecy), for Bern; and of replenishing the coffers of State, for Berlin and London, with the former hoping to recover some 30 billion euros and the latter 7 billion euros.

The rate of imposition has been fixed at 34% of the protected assets however the actual imposition should nevertheless be limited to 20/25% (taking into account the application of legal time limits). With respect to future income of German and British investors on the other hand, the rates vary according to the legislation in force in their respective countries. For example, a levy of about 26% should be imposed in relation to Germany.

With regard to France, the Minister of Finance François Baroin stated in Parliament (“*l’Assemblée Nationale*”): “*As a matter of principle we are not against discussing with Switzerland […]. I have asked my German counterpart to give me details of the expectations of the agreement concluded between Germany and Switzerland*” (Sept. 8th 2011).

An amendment to the amending Finance Act of July 6th 2011 was introduced and approved on the initiative of the former Minister of Defence Hervé Morin. He requested that the government launch an investigation into the ways of implementing the Rubik in France and its potential profitability.

However, the Minister for the French Budget, Mrs. Valérie Pécresse has recently rejected concluding such an agreement with Switzerland.

“*We refuse any granting of an amnesty. It is the antithesis of our Republican pact. […] We do not wish to be involved in the ‘Rubik’ scheme, because this will lead us into accepting to compromise our principles*.”

Our opinion

The French government considers that allowing its residents to obtain **anonymity** for their bank account held in Switzerland is inconsistent with its Republican pact; furthermore, there are questions concerning the compliance of the German and British agreements (subject to ratification in 2013), with the European Union regulations currently in force.

The introduction of the Trust in the French tax system

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Hitherto, the General Tax Code has not addressed the Trust other than indirectly through certain legislation taxing income on structures held abroad by French residents (articles 123 bis and 209 B of the French General Tax Code).

The law of July 29th 2011 introduced Article 792-O bis General Tax Code which gave rise to a **tax definition of the Trust** and established rules of imposition for the **holding** and **transmission** of a Trust by establishing **duties of disclosure**.

1. The new Article 792-O bis of the General Tax Code defines a Trust as "*all the legal relationships created in the law of a State other than France by a person having the capacity of settlor, either by an act inter vivos or mortis causa, with a view to placing assets or rights under the control of an administrator, for the interests of one or more beneficiaries or for the carrying out of a fixed aim*."

The settlor is defined as being "*either the physical person who has created [the trust] or, when it has been created by a physical person acting in a professional capacity or by a legal entity, the physical person has invested assets and rights in it*."

2. The law introduces the principle of **wealth tax liability** on the assets of a Trust – whether revocable or irrevocable – and imposes this tax on the settlor under the conditions set out by the law. An exception however is made for charitable trusts.

In case of non disclosure by the settlor of the Trust assets for wealth tax purposes (or if the settlor is deceased, non disclosure by the beneficiary), the law imposes a levy of 0.50% in substitution for wealth tax applying to the market value of the assets held on 1st January of the year in question.

3. Article 792-O bis II of the General Tax Code **imposes transfer duties** on gifts and estates implemented through a Trust.

Territorial rules set out in Article 750 ter of the General Tax Code applicable to these rights is merely adapted so as to deal with the introduction of the Trust into French law, but the principle remains the same.

Thus, **without prejudice to any provisions of international tax conventions**, any transmission free of charge in France will be taxable; this includes:

– all the assets of the Trust, wherever their location when the settlor has his/her domicile in France;

– all the assets of the Trust wherever their location, when the beneficiary is domiciled in France at the date of the transmission and has been so domiciled during at least six years in recent times;

– the only assets in the Trust are situated in France in the other cases.

The rate of imposition will be calculated according to the conditions and type of transmission.

4. In addition the Legislator has introduced a **duty of disclosure on the administrator of the Trust**, i.e. "trustee", as soon as the assets of the Trust are susceptible to taxation in France. The following are targeted in the cases below where:

– the settlor or one of the beneficiaries of the Trust is domiciled in France;

– at least one of the assets of the Trust is situated in France.

Disclosure must bring to the French Adminstration's attention:

– the setting up, variation or dissolution of the Trust;

– the contents of the Trust instrument;

– the market value of the assets on January 1st of the year of imposition.

Non compliance with these duties of disclosure is particularly stringent. The law prescribes a fine of €10,000 or an amount corresponding to 5% of the value of the assets of the Trust if it is higher.

These provisions come into force from January 1st 2012 and their method of application will be specified by Decree.

Our opinion

The French Tax Administration is endowed with an effective mechanism for forcing transparency from Trust operators: settlers and/or beneficiaries resident in France, or even the owners of assets situated in France.

In such situations, long term protection of anonymity cannot be guaranteed and the several liability of trustees may be incurred (the duties of disclosure imposed on trustees were recently elaborated in an "advance ruling" of December 23rd 2011).

Each party must consider the potential consequences of for example an irrational dispute between beneficiaries, e.g. when one of them considers that he has suffered an infringement of some of his rights.

2012: New personal property measures

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France will have adopted successively on July 29th, September 19th, November 2nd and December 28th, four amended financial laws and a Finance Act for 2012 from December 21st (hereinafter referred to as "the Law") which profoundly change the landscape of French tax law with regard to personal property, by reducing the cost of holding assets but also raising the cost of their transmission and reinforcing the taxation on entrepreneurs.

I. Reducing the cost of holding assets, but raising the cost of their transmission:

The recasting of wealth tax from 2012: the Law reduces the amount (i), simplifies the duties of disclosure (ii) and relaxes the conditions applicable for exemption of professional assets (iii).

i. The **threshold for triggering** imposition is raised from €800,000 to **€1,300,000**: the progressive scale in stages is abolished and replaced by an imposition which starts from the first euro, of 0.25% for assets inferior to €3,000,000 and of 0.50% for those of whose value is equal or superior to this amount; however the ceiling which until now allowed the limitation of the total amount of wealth tax and income tax for the previous year to 85% of income for the same year is abolished.

ii. **Duties of disclosure** are simplified for taxpayers whose net imposable assets is less than €3,000,000. They are from now on limited to a simple indication of the net taxable asset value in an income tax return. This exemption from declaring wealth tax is accompanied by an exemption from producing supporting documents relating to liabilities; and a system of tax recovery by tax assessment. However for assets above €3,000,000 the duties of disclosure remain unchanged.

iii. The **professional assets** regime is planned around two issues:
* Taxpayers holding shares in different companies who satisfy the exemption conditions for each one may, from now on, be exempted from wealth tax on their shareholdings even if neither economic nor legal links exist between the two companies;
* The minimum threshold of 25% required to grant social rights the status of professional assets is now based on voting rights rather than on the face value of the shares.

In return, the **tax shield** will be abolished from **January 1st 2013**: the shield mechanism remains applicable in 2011 and 2012 but from now on only its imposition for wealth tax purposes remains possible.

- **Since July 31st 2011**: the taxation of the transmission of **family assets** has been slightly increased.

The tariff for the last two bands of the tax scale applicable to inheritance and gifts granted in **direct line** as well as for gifts between **spouses** or between partners through a **civil partnership** (known as "PACS"), is increased by 5 points (e.g. from 40% to 45% for the last band). However, the reductions on gift tax linked to the age of the donor are abolished (the only ones continuing to benefit from a reduction of 50% are gifts of the full ownership of businesses within the framework of a "Dutreil" pact when the donor is less than 70 years of age); finally the time limit for reporting previous gifts is increased from 6 years to 10 years.

On the other hand, family gifts of cash are facilitated by increasing from 65 to 80 years the age limit of the donor for making the gift exempted from taxes for the benefit of a child, or in the absence of a child, a nephew and niece. This applies to a sum which can be repeated every ten years and which is reviewed each year (€31,865 for 2011).

- **Capital gains on the disposal of real property**: the Law replaces the allowance calculated on the duration of ownership of the property which was formally applicable and allowed the transferor to avoid imposition after holding real estate for 15 years – by an allowance whose rate is progressively reduced, and which does not give a total exemption of capital gains until after thirty years of ownership of the real estate. The Law however prescribes a relaxation of this new regulation for the benefit of taxpayers who are not owners of their principal residence. Such persons may thus benefit, from a total exemption mainly on condition that the proceeds of sale will be reinvested in a principal residence.

- **The distribution fee** is raised from 1.1% to 2.5% as at January 1st 2012.

II. Consolidating the taxation of entrepreneurs

- The resuscitation of the "exit tax" on equity shares: as was the case several years ago, certain physical persons

are subject to imposition on unrealized capital gains or capital gains carried forward, these are physical persons who at the same time:
* transfer their tax domicile outside France;
* after having lived in France for 6 of the last 10 years;
* and who hold a substantial shareholding either directly or indirectly of at least 1% of the dividends (or the value exceeds €1,300,000).

This imposition, at a rate of 19% (to which is added welfare contributions of 13.5%), may benefit from an automatic suspension of payment in case of transfer to a Member State of the EU, or to an EFTA State which has signed a convention of mutual assistance with France.
Under certain conditions, this imposition will be reimbursed or reduced (apart from welfare contributions) upon **returning to France** or at the expiry of an **8 years time limit** following the transfer of tax domicile.

- **Increase in the rate of welfare contributions**: since October 1st 2011, the global rate of welfare contributions including the General Social Contribution ("*contribution sociale généralisée*" or "CSG"), Social Debt Repayment Contribution ("*Contribution pour le remboursement de la dette sociale*" or "CRDS"), the rest of the welfare contribution and other additional levies has increased from 12.3% to 13.5%.

- **Increase in withholding tax on dividends**: the last amending Finance Act of 2011 prescribed that the rate of withholding tax on dividends, applicable at the option of the taxpayer, be raised from 19% to 21% from January

1st 2012. This levy nevertheless remains slightly more advantageous than a marginal imposition, but only for the highest incomes.

- **Introduction of a special contribution for high incomes**: the Law creates a special contribution of 3% on taxable income after allowances exceeding €500,000 for a couple and €250,000 for an individual. This contribution will rise to 4% when incomes exceed €1,000,000 for a couple or €500,000 for an individual. Even if this contribution is distinct from income tax, it will be declared and recovered in the same way as income tax.

Our opinion

By rebalancing the methods of taxing high value personal estates, the Legislator has the aim of making a fairer, simpler and economically more relevant system of taxing wealth.

However, certain measures which have been adopted seem to be debatable, especially the untimely reintroduction of the “exit tax” mechanism that the French government was previously obliged to abandon after the tax was judged to be contrary to community principles.

Removing the complexities of French Companies law

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1. Mergers and demergers

i. **The waiver of the need for a written report**: the directors of limited liability companies – "Société Anonyme" (SA), "Société par Actions Simplifiées" (SAS) and "Société en Commandite par Action" (SCA) – may by unanimous decision of the shareholders of all the companies involved in the transaction, from now on be **exempted from preparing a written report** relating to the planned transaction.

ii. **The 100% acquisition of a subsidiary**: when the **acquisition company has held all the shares in the target company** since the merger project was filed at the Registry to the completion of the transaction, **merger approval** by an extraordinary general meeting of the target company and the acquisition company **is no longer required**.

However, one or more associates or shareholders of the acquisition company who together hold at least **5%** of the shares may petition the court for the nomination of an agent to summon an assembly so that they can state their views on the merger.

iii. **A 90% acquisition of a subsidiary by two limited liability companies**: when the acquiring company permanently holds at least 90% of the voting rights in the target company (without holding all of them), from the filing of the merger project at the Registry of the Commercial Court until the completion of the transaction, the following obligations are no longer required:

- **the approval of the merger at the general meeting of the acquisition company**, except where one or more of the associates or shareholders together holding at least 5% of the shares may petition the court for the nomination of an agent to summon a meeting called to decide on the approval;

- **preparation of the auditors' report on the merger and the directors** when the target company's minority shareholders will, prior to the merger, be offered buy back of their shares by the acquisition company at a fair price.

iv. Demergers between companies of the same group: in the case of the

demerger of a limited liability company whose shares are 100% held by the companies which benefit from the demerger the following formalities are no longer required:

- the intervention of an auditor for the demerger;

- the holding of meetings by the companies involved in the transaction, except where a request has been made by minority shareholders of the companies which benefit from the transaction.

Our opinion

In general terms we welcome the passing of these provisions and especially the easing of long term financing transactions. However, with regard to regulated conventions whose aim is to allow management control (often majority shareholders), the new provisions could, in the case of dishonest management, undermine the rights of minorities.

2. Regulated conventions

These conventions are concluded directly or through intermediaries inserted between the company and one of the management (Chief Executive, manager, administrator etc.), one of the shareholders holding a fraction more than 10% of the votes, or, if it is a company holding shares, the company controlling it.

The dangers of a furnished tenancy

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The owners of apartments are sometimes tempted to **favour furnished tenancies** in order to avoid French residential tenancy law which is extremely protective of the rights of tenants of unfurnished residential premises. These are: a tenancy agreement for a minimum term of 3 years (6 years for a landlord which is legal entity), a tacit renewal of the tenancy, security of tenure, strict regulation of increase in rent, and the termination of the tenancy is strictly controlled.

This choice may present serious **legal and penal** risks which remain unrecognized, and which may be understood in the light of the landlord's obligations. Indeed, these obligations are different depending on whether the furnished premises are considered to be the **tenant's principal residence** or not:

1. Furnished premises which constitute the principal residence of the tenant

Furnished tenancies are considered as residential accommodation when they satisfy two conditions:
– the furnished accommodation must constitute the principal residence of the tenant and, consequently;
– the tenancy must be evidenced by a written tenancy agreement for a term of one year renewable (it may be reduced to 9 months for students). The term of the tenancy may not be inferior to one year and is subject to tacit renewal.

The landlord who does not wish to renew the tenancy agreement must inform the tenant and comply with a notice period of three months. The landlord's refusal to renew must be for valid reasons either because of his/her decision to take back the apartment, or to sell it or for another legitimate and serious reason. With regard to the tenant, s/he may terminate the tenancy agreement at any time without prejudice to the obligation to give one month's notice.

These are **mandatory** provisions and they aim at protecting tenants of furnished premises who are excluded from the protective regime of the Law of July 6th 1989 which governs residential tenancies.

2. Furnished premises not constituting the principal residence of the tenant

These are usually short term furnished rentals for tourist clienteles, or residences for a longer or shorter term used as a secondary residence, or used for commercial or professional purposes.

When furnished premises, which were originally used as residential premises, **no longer constitute the tenant's principal residence**, the legal regime

for furnished residential premises no longer applies; **the term of the tenancy is freely agreed between** the parties. However this represents a departure from the legal framework of premises which are intended for use as a principal residence and therefore constitutes a **change of use** of the premises which must be **declared and provisionally authorized** by the town hall where the premises are situated (Article L631-7 of the Construction and Housing Code which applies to communities of more than 200,000 inhabitants and for the Departments of Hauts-de-Seine, Seine-Saint-Denis and Val-de-Marne).

3. Penalties

In default of an application for change of use, the owner is liable to a **fine of €25,000**. This fine is imposed by the President of the High Court (Tribunal de Grande Instance) of the locality of the property at the request of the Public Prosecutor. The court will further order the **return to accommodation status** of premises transformed without authorization within a **time limit** fixed by the court. At the expiry of the time limit, the court will order a **periodic penalty payment** ("*astreinte*") of a maximum amount of €1,000 per day and per square metre of floor space of the premises whose use has been illegally changed.

The enforcement of this fine is applied especially for Paris so as to curtail the loss of residential premises which are a stable source of housing and of tax receipts.

Landlords who have deliberately made false declarations or who through fraudulent activities have concealed or attempted to conceal residences subject to declaration, are liable to **one year's imprisonment and/or a fine of €80,000**. The Criminal summary court (Tribunal correctionnel) will in addition ensure that the tenancy is terminated and that any tenants that are illegally accommodated are evicted.

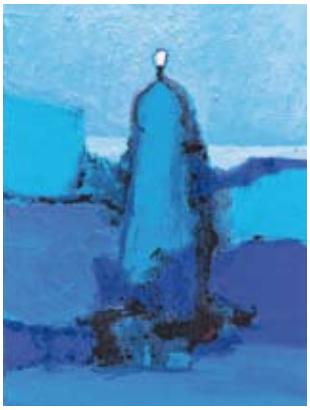
Our opinion

The heavy civil and penal sanctions incurred as a result of a lack of understanding of the applicable rules for furnished premises of rented accommodation must encourage owner landlords to be extremely prudent when renting their properties, in particular in communities of more than 200,000 inhabitants and in the Departments of Hauts-de-Seine, Seine-Saint-Denis and Val-de-Marne.

Furthermore, a tax on tenancies with surfaces of less than 14 square metres and exceeding the threshold of 40 euros per square metre was passed by the Finance Act for 2012. This tax, which varies in accordance with the increase from 10% to 40% of the rent received less charges during the calendar year, applies to all types of tenancy: furnished or unfurnished.

Dominique André, artist painter

Solitude, 1994



Le couple

Dominique André was born at Aubusson in 1943. His grandmother, Elvira Ventura, was a model for Modigliani, Rodin and Pascin. His grandfather Pierre Dubreuil, was the president of French painters and engravers and his father Maurice André, a tapestry painter (Aubusson tapestries). These circumstances allowed him from a very early age to rub shoulders with the milieu artistic.

After studying at the National School of Decorative Arts of Paris he received many awards: the Prize of the Dôme ("Prix du Dôme") in 1966, Laureate for the young painter's prize ("lauréat du prix de la jeune peinture") in 1967, Diploma for incentives in Art and Industry ("diplôme d'encouragement à l'Art et l'Industrie") in 1969.

At the same time he became a renowned Chief set designer in the cinema and worked with Claude Sautet, Pierre Granier-Deferre, Philippe de Broca, Georges Lautner, Samuel Fuller, Gérard Oury, Francis Veber, Sergio Leon and many others.

Réincarnation, 1988

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