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International Taxation Practice Group (ITPG)

Major reforms of French investments taxation

By Prof. Robert Anthony



Wealth tax 2011

Only taxpayers possessing assets over M€ 1.3 have an obligation to declare and to pay Wealth Tax (on September 30th, 2011). **Wealth tax 2012:** As from 2012, a new tax threshold at two levels is established, applicable **from the first euro**:

- 0.25% for assets **between M€ 1.3 and M€ 3.**
- 0.5% **above.**



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Capital gains on property

- Until now during the sale of the property, the owners benefited from a 10% allowance per year beyond the fifth year of ownership, (that meant a total exemption of the capital gain tax at the end of 15 years). The exemption will be substantially reduced and the period for relief extended which is currently in debate in the National Assembly. According to the last version of the bill (not definitive), the tapering relief has been reduced to 2% for every year of detention after the fifth year, 4% from the eighteenth year to the twenty-fourth year, and finally 8% afterwards, which is a **total exemption after thirty years of ownership**. This new method of calculation will come into effect for the transfers realized as from **February 1st, 2012**, except for the case of private individuals of certain cases of restructuring for where the reform would apply as from August 25th, 2011.
- The taxable capital gain resulting from the sale of a **holiday home**, a rented

property or land remains taxable at the 19% rate plus 12.30% of social charges (13.5% as from 2012), which is a total at present of **31.30%** subject to any appropriate relief.

Capital gains of transfer of securities realized in 2011: The tax rate of these capital gains is fixed to 19% plus 12.30% of social charges, that is **31.30%** in total (social charges being 13.50% as from 2012, the global rate of taxation will be then 32.50%).

Estate Duty

The increase of 5% of these duties on the last two thresholds for a taxable estate is effective **since July 31st, 2011**: partially taxable **40%** (after allowances) **between €902,838 and €1,805,677**; and **45% beyond €1,805,677**.

- The reestablishment of the allowance for a donation has been extended from 6 to 10 years.

...next page

- The reductions of duty concerning a donation according to the age of the donor rescinded.

Trusts

The duties of a gift or demise are due as **from July, 2011** on all free transfers to via a trust, of which the rates could reach **up to 60%**.

- An **annual taxation 0.50%** based on the market value of the assets of the trust is chargeable to the settlor or the beneficiaries being physical persons, in the absence of a declaration of the Wealth tax.
- There is an obligation to declare the creation of the trust at the time of its constitution, or any modification or dissolution/liquidation, on January 1st of every year. The neglect to declare wealth tax of the trust is sanctioned by a **€10,000 fine** or by **5% of the value of the assets of the trust** whichever is the greater.

Life Insurance

- A **25% withholding tax** is applied to the sums paid because of any death **from July 29th, 2011** if the distributed value paid to every beneficiary is **superior to €902,838**. The amount inferior remains taxable at the rate of 20% after taking into account the € 152,500 allowance to the beneficiary.
- Life insurance policies taken out abroad before becoming tax resident

are no longer exempt from these taxes.

Exit Taxation

- Taxation of the latent capital gains for the taxpayers transferring their fiscal residence outside France:
 - On securities and any of earn-out deals, except OPCVM.
 - When the participation represents more than 1 % of the capital of the company or when its valuation is superior to M€ 1.3.
 - Calculated on the value of the shares on the day before the transfer of the tax domicile.
- The rate of the taxation is that of capital gains on shares increased by social charges, that is currently **31.3%**.
- This taxation is applicable for the departures outside of France as **from March 3rd, 2011**.

To know more on any of the above subjects, our advisors are available to help you.

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Practice Group Estate Planning, Trusts & Private Equity

The new tax regime of trusts in France

By Prof. Robert Anthony

The article 14 of the modified finance act for 2011 created a new system taxation for the foreign trusts of which the beneficiaries or the settlors, being physical persons, are or were fiscal residents of France.

The correct application of these new regulations is based at first on the declaration/disclosure of trusts to the French tax authorities and it under the unique administrative and financial responsibility of the indicated trustee called appointed as the manager of the trust.

In the French tax law, the direct responsibility of a trustee is a new notion while it exists in a certain numbers of well-known foreign jurisdictions.

The new fiscal legislation allows in fact to settle without retroactive consequences for any gifts and deaths previous to the publication of the law, to enable the intelligent and fiscally regular use of certain foreign trusts.

The trust is used frequently, in the Anglo-Saxon world, at first to pass on assets to future generations. This is often used in particular for parts of a fam-

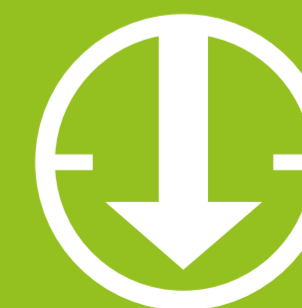
ily company, by ensuring the continuity in the family for several generations. A “Normal” legacy would in particular allow the heirs to destroy the family business.

But in the civil law the trust is not recognized and is even forbidden within the framework of the article 1130 of the civil code, promulgated by the law of February 7th, 1804, which bans the agreement on future estate issues.

A small number of French residents established trusts not resident in France in a purpose of tax evasion. They even acquired buildings in France by way of trusts.

The objective of the French legislator is unveil the trust by subjecting the trustee to severe administrative and financial obligations.

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