ELTHOS CONSEIL

15 February 2011

Networking Group – Tax Lunches

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TOPIC FOR DISCUSSION 1 – WEALTH TAX – TAX SHIELD

Administrative Instruction dated 29 December 2010 - 13-A-1-11 published on 11 January 2011 – Tax shield non-residents – Income tax and wealth tax

The administrative instruction addresses the situation of individuals considered as non-tax residents in France despite deriving most of their taxable income from France – referred to as "non-resident Schumacker".

The administrative instruction provides direction as to how the benefit of the right to claim income tax by these individuals (Income tax shield). Simultaneously, the Administrative Instruction provides direction as to the application of the cap on wealth tax.

Article 885V French General Tax Code limits the total burden of income & wealth tax combined: tax payers cannot be burdened with an amount of income tax exceeding 50% of their revenue and with a combined income tax and wealth tax exceeding 85% of their income. Above the 85% cap, the tax payer will be entitled to a refund. Until the Administrative Instruction referred above was issued, this rule only applied to french tax residents. As such, individuals deemed as non residents for tax purposes could not benefit from the tax shield and the cap even though they derived most of their income from and had the center of their economic interest in France.

Alone, the 50% tax shield hands out Euros679m back a year to wealthy French households.

The European Commission considered, in an infringement decision against France dated 28 October 2010, that the rule limiting the application of the tax shield to individuals deemed as french tax residents, even though they earn most of their income in France and are primarily taxable in France, is discriminatory and therefore incompatible with EU rules on free movements of goods and capital. The decision from the European Commission noted 3 key issues against the breadth of application of the tax shield:

- The rule does not apply to non tax residents even if they perceive most of their revenue and are primarily taxed in France
- The cap at 85% of net income
- Only tax paid in France is taken into account to calculate the 50% shield and the possible refund of tax paid.

In consideration of the discriminatory nature of the interpretation of the tax shield rules by the French Tax Authorities, the European Commission ordered France to modify its regulation within 2 month of the Infringement decision. France has been instructed to extend the tax shield to non residents for tax purposes deriving most of their income in France.

To support its infringement decision, the European Commission referred to a decision of the European Court of Justice dated 14/02/1995 pursuant to which Member states are only allowed to treat residents and non-residents of a Member State differently provided that they are in different situations. Residents and non-residents deriving most or all of their income from the same Member State must be treated equally. Indeed, under such circumstances, residents and non-residents are in a comparable situation.

In its Administrative Instruction, the French Government has accepted that under the provisions of Article 4B-c of the French General Tax Code, tax payers should be treated as French tax residents when they are considered as having the centre of their economic interest in France; eg, when they derive most of their income from French sources. As such, these tax payers can benefit from the tax shield and the cap.

Tax payers can claim the overpaid tax in N+2 from the year of reference N. The income taken into account is the income perceived the year following the year during which tax was paid.

Points of interest:

- Only applies to individuals whom can be considered as tax residents under 4B-c
- The issue relating to the fact that the amount of tax paid to be taken into account is only the amount of tax paid in France remains unsolved.
- Double residency
- A claim has to be lodged
- Application in time

TOPIC 2 – TIER 1 INVESTORS VISA

The Home Office will shortly propose changes to "investors' visa" to encourage more wealthy people to live and invest in the UK – article FT 6 February 2011.

Tier 1 Highly Skilled Workers numbers are cut down by a third compared to last year. In addition, only 1,000 highly skilled workers will be allowed to move to the UK against 14,000 a year ago.

Wealthy migrants will only have to spend ½ year in the UK against 9 months under current rules to qualify for the visa. The wait for the permanent residency will be drastically reduced.

High net worth individuals & entrepreneurs are exempt from the new cap on non-European migration. The UK only attracts a few hundred wealthy individuals per annum against 3,000 for Canada.

Proposal 1 – investors bringing £10m will be able to claim permanent residency within 2 years
Proposal 2 – investors bringing £5m will be able to claim permanent residency within 3 years
Proposal 3 – investors bringing £1m will be able to claim permanent residency within 5 years

The current rule under Paragraph 245 O-U of Part 6A and Appendix A of the Immigration Rules, investors must score75 points to benefit from the Investors visa. 75 points are obtained as follows:

- The candidate to migration must have £1,000,000 of money that is held in a regulated financial institution and disposable in the UK amounting to no less than £1,000,000;
- The candidate to migration must have £2,000,000 in personal assets (once liabilities have been deducted) and have £1,000,000 that is in a loan from an authorized financial institution.

Rules for entrepreneurs have also been relaxed. Businesses should be able to bring an extra employee for an additional investment of £50,000

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