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PERIODIC REVIEW OF INFORMATION ON LEGAL AND TAX MATTERS

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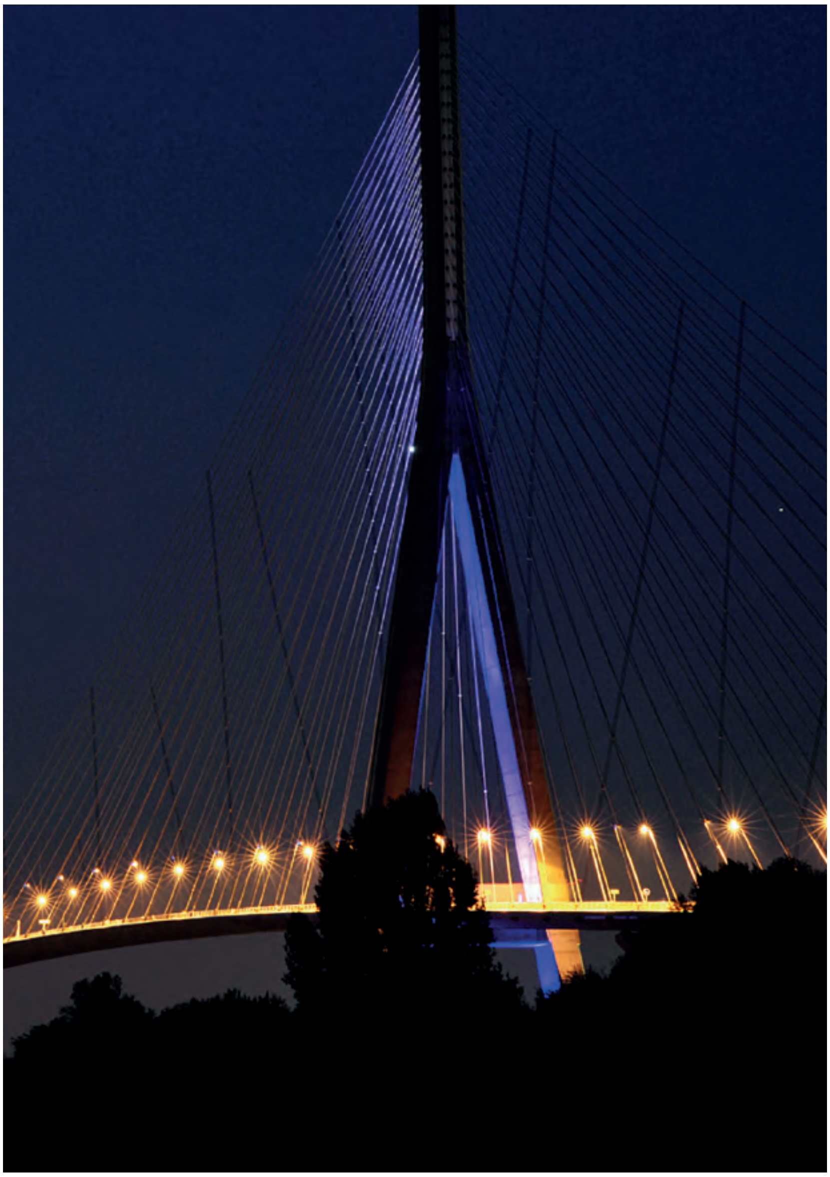
The amendment to the Federal Debt Enforcement and Bankruptcy Act (DEBA), adopted on 16 December 2016 by the Federal parliament and scheduled to be implemented in 2019, aims at strengthening the debtor's right to avoid the consequences of unjustified proceedings. The changes expanded the provisions related to «requests for non-consultation by third parties», «requests of evidence to the creditor», and the «right to cancel or suspend the proceedings». While these amendments may share a common legislative purpose, their consequences will be limited for prudent creditors.

Article 8a of the DEBA establishes the right to review reports and extracts from the registers of debt collection and bankruptcy offices. Third parties are required to demonstrate their interest in order to view an individual's debt register entries; in particular, such an interest will typically be recognized if the request is made at the conclusion or liquidation of a contract. In order to limit the ability of third parties to review entries related to proceedings for which the debtor was successful or those withdrawn by the creditor, the new language of Article 8a para. 3 let. d DEBA provides that, three months after the notification of a payment order, the debtor may make a request to restrict third parties from accessing information about the proceedings. The creditor may oppose this request by proving that proceedings to dismiss the debtor's objection started within the established time limit or within 20 days as set by the debt enforcement office.

The debtor's right to request that the creditor provide evidence supporting its claim may be exercised at any time after debt collection proceedings have started, under the new language of Article 73 of the DEBA. Conversely, the current law links the expiration of this right with the expiration of the period in which the debtor may make an objection. The debtor may also request a summary of the

creditor's rights against him. As provided in law currently in effect, the time limit for the debtor to make an objection will continue to run if the creditor does not respond to the debtor's request, despite the time limit established in the summons, and the judge, in rendering a decision, will consider a possible lack of cooperation from the creditor only with regard to the costs of proceedings.

Under the current language of Article 85a para. 1 DEBA, applicable to the ordinary or simplified procedure, the debtor may initiate an action at any time to establish that the debt no longer exists or that a stay has been granted. The amendment to this paragraph will give the debtor this right whether debt collection proceedings are subject to an objection or not. The consequences of this change lie in the new treatment of summonses to pay to which the debtor has not raised an objection; the current law allows a debtor to call into question such debt collection proceedings only through a declaratory action, requiring evidence of an interest to act and fixing the jurisdiction of the courts at the debtor's domicile. The new language of Article 85a para. 1 DEBA will thus not require proof of an interest to act and will provide that the debt collection proceedings be initiated in the creditor's jurisdiction. In case of opposition, it seems likely that the above-mentioned new Article 8a DEBA will replace the present usage of Article 85a of the DEBA.



PERSPECTIVES

The amendments to the DEBA entering into force in 2019 will improve the safety of a debtor claiming to be the subject of unjustified debt collection proceedings but will nonetheless leave creditors with some measure of control in this matter. A request to restrict third parties' access to the debtor's debt enforcement registry may easily be rejected through proceedings by the creditor to dismiss the debtor's objection. A request to the creditor to show proof of his claim will have an effect only in the calculation of the proceedings' costs should the creditor fail to do so. Finally, the new Article 85a DEBA will allow for a declaratory action whether debt collection proceedings are subject to an objection or not.

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MATRIMONIAL AND INHERITANCE REGIMES IN FRANCE AND CHANGES IN THE PRIVATE INTERNATIONAL LAW RULES: WHAT ABOUT PROPERTIES LOCATED IN FRANCE?

Only a few months left to take advantage of the 1978 Hague Convention on matrimonial property regimes applicable in France!

Counsel are preparing for the entry into force – as from 29 January 2019 – of the **European Union («EU») Regulation of 24 June 2016 n° 2016/1103 that will govern matrimonial property regimes** (hereafter the «Matrimonial Regimes Regulation») and that, subject to subsequent accessions, will bring together 18 EU countries.

This new regulation will, for the future, replace the **Hague Convention of 14 March 1978** (hereafter the «Convention»), currently in force in France. This new regulation is largely based on this Convention, while different on several points, one of which we shall discuss below.

It concerns **immovable properties held in France by persons with an international element** (country of residence, nationality...).

Currently, the last paragraph of the Convention's article 3 establishes the possibility for spouses – regardless of the designation by them of the law applicable to their matrimonial regime «base» – to *«designate, with respect to immovable assets or for some of them, the law of the place where the immovable assets are situated. They may also require that immovable assets to be acquired later on be subject to the law of the place where they are situated.»*

This possibility of voluntary split of the matrimonial property regime will disappear on 29 January 2019 with the entry into force of the Matrimonial Property Regimes Regulation.

This evolution is in compliance with the **EU Succession Regulation of 4 July 2012 n° 650/2012** (hereafter the «Succession Regulation») – applicable to successions opened as from 17 August 2015 – which rejects the principle of scission of successions previously in force in several countries, for example France.

Recent EU regulations in family law legislation point towards the uniformity of the applicable law, in acknowledgement of the great increase in people's mobility.

Yet, in specific situations, this exceptional regime, set forth in the last paragraph of the Convention's article 3, enabling a couple in a cross-border situation to designate French law as the matrimonial regime law applicable to only those immovable assets held in France, can be of real interest.

It is worth noting that the number of instances in which this designation makes sense has substantially declined since the entry into force of the Succession Regulation, which put an end to the system of scission of successions, notably in France.

In fact, under the former French inheritance law – applicable to all successions opened before 17 August 2015 – succession was governed by the law of the deceased's last domicile for all movable assets and by the law where the property was situated for immovable assets.

One of the striking aspects – often not appreciated by those to whom

it applied – was that the immovable assets located in France alone constituted an entire specific and independent estate, to which inheritance rules in general and forced heirship rules governed by French law in particular had to be applied.

A classic example here is someone living permanently abroad, married with children, who had bought a secondary residence in France. The investor had, furthermore, a property in his country of primary residence.

In the proposed distribution of his assets in case of death, he willed that the property in France go to his spouse alone and that the children be considered elsewhere.

Quite naturally, he reasoned from an overall point of view, taking into account all his assets, movable and immovable, irrespective of where they were located.

However, the system of scission of succession in force in France compelled one to consider the secondary residence as an independent entire estate subject to French Law, so that its transfer to the spouse alone might be hampered by the forced heirship law for children who could be inclined to request a share of the bequest to the spouse.

The 1978 Hague Convention could then come to the rescue of persons in such a situation. In fact – and based on the assumption that all the children belong to the couple – it was possible for the spouses, while maintaining their original foreign matrimonial property regime, to designate French law as applicable to the immovable asset situated in France and to choose, in the context of French law, a pooling system with full award of this asset to the surviving spouse. The liquidation of this matrimonial property regime occurring necessarily before the settlement of the estate, and the matrimonial benefit resulting from matrimonial conventions not constituting a bequest (subject to exceptions which we have left aside), attribution of the asset to the surviving spouse could be entirely executed. Furthermore,

it was no longer necessary to open a succession in France, there being an absence of tax base. This solution also presented a tax advantage in terms of transfer rights, which has today disappeared.

Since the entry into force of the Succession Regulation, the situation is different: for countries bound by this regulation, the general rule set forth in its article 21 is that the inheritance – as a whole and thus regardless of whether the estate's assets are movable or immovable – is subject to the law of the country in which the deceased had his primary residence at the time of death.

The Regulation has thus opted for the principle of unity in inheritance law, which it expressly sets forth in article 23, specifying that « **the law designated under article 21** (general rule and exceptional situation of the manifestly closer connections with another country) or **22** (choice of law by the deceased) **governs the entire succession.** »

However, having only one law applicable to the entire estate is assured only when the estate is connected with countries bound by the Succession Regulation.

Once the succession concerns a third country, fragmentation of the estate is possible.

In the above example, let us imagine that the spouses live in England (the example, generally speaking, being transferable to countries that apply the system of scission) and that one of them dies. The law applicable to the estate under the Succession Regulation will be the English law.

This regulation thus governs the settling of the estate.

The English conflict rule is based on the principle of scission: the movable assets are subject to the law of the deceased's last domicile (England), and the immovable assets to the law of the country where the immovable assets are located (France). English law will thus refer the matter to French law.

Yet, pursuant to article 34 of the Succession Regulation, when a country outside the regulation's purview is concerned, it will be appropriate to apply this country's law, including its international private law and thus its referral rules.

Note that there is a debate over whether a participating country (here, France) should accept such a referral, as this will result in fragmenting the entire estate rather than unifying it. We shall have to wait until European jurisprudence rules on this question, but it can be noted that the text of article 34 does not make such distinction. It is thus prudent to consider an effective situation of fragmenting the succession into two distinct entities as a result of referral.

The attribution of the immovable asset situated in France to the surviving spouse thus cannot be taken for granted, as the children may claim their legal share of this asset.

Other options should thus be considered.

One could be to designate the national law of the deceased as the sole law applicable to the estate, by virtue of a *professio juris.*

This overview does not allow developing in detail the effects of such *a professio juris* while dealing with a third country to the Succession Regulation (in particular, according to the nationality or nationalities of the deceased and the choice of law that would be available to the deceased). However, it is likely that, faced to a legal system that does not recognize the *professio juris* institution while implementing a system of scission (e.g. United Kingdom, Australia, United States, Mauritius, China...), one may soon find oneself in a settlement and procedural tangle that only a harmonious family agreement can hope to resolve.

It would then be appropriate, if the necessary conditions of this designation are fulfilled, to rely on the exceptional regime in the last paragraph of article 3 of the Hague Convention, which will remain in force for the next twelve months in France.

By designating French law as the applicable law to the matrimonial property regime of only the immovable assets situated in France, and choosing to subject these assets to a community coupled with the clause of full attribution to the surviving spouse, the question on the applicable law of succession will no longer arise (we have set aside the assumption of a possible contest of the freely disposable portion). The French notary will take note of the transfer of the asset by virtue of the matrimonial conventions.

As for the English judge, he will probably not worry about the future of the immovable asset situated in France, as long as his domestic law refers the devolution of the asset to French law.

Many people hold immovable assets in France while having an international element. Transfer of these assets is not always planned for, and the surprise – perhaps the perplexity – may be great at the opening of the succession.

The exceptional regime of the Hague Convention – which contravenes the principle of unity of the matrimonial property regime and has been highly criticized for this reason – must be approached carefully and cautiously. It nonetheless remains true that the regime can address legitimate interests in specific cases, in particular regarding countries outside the EU (or not bound by the Succession Regulation).

PERSPECTIVES

The recent European texts, in particular those dealing with succession laws and matrimonial property regimes, already implemented or about to be implemented, prompt a closer look, with a new approach, at patrimonial situations with a cross-border implication.

The case of holding an immovable asset in a country other than one's usual country of residence is as such topical.

For residents of a country not bound by the Succession Regulations and holding an immovable asset in France, some urgency does apply in order to benefit from the Hague Convention before it expires.

Contact : Pascale Cano

VOLUNTARY DISCLOSURE OF TAX EVASION IN SWITZERLAND

The advantage for a taxpayer to voluntarily disclose tax evasion is to avoid inconveniences caused by the autonomous actions taken by the tax administration. If (deductible) tax reminders and interest on arrears are due in all circumstances, preventing litigations with the tax administration wards off fines of up to three times the amount of evaded tax as well as criminal proceedings.

According to Article 175 of the Law on Direct Federal Tax (DFT), when a taxpayer voluntarily discloses a tax evasion for the first time, all criminal prosecutions are waived against him under three conditions: no tax authority should have been aware of the evasion; the taxpayer should fully collaborate with the authority so as to determine the amount of additional tax assessments; and he must endeavour to discharge the amounts due. The same conditions are set out in Article 153a DFT regarding the simplified tax reminder for heirs.

A first voluntary disclosure also enables escaping from criminal prosecution for making use of falsified records (Art. 186 para. 3 DFT). For all subsequent voluntary disclosures, even if the fine is reduced to one fifth of the evaded tax, should the other conditions of a first non-punishable disclosure be fulfilled, the threat of a criminal prosecution remains.

Risks associated with the wait-and-see attitude are significant: the confidentiality of information currently suffers from unpublished disclosures, both through official and unofficial channels such as the Offshore Leaks or the Panama Papers. In fact, as soon as the tax administration becomes aware of a tax evasion, the voluntary disclosure procedure is no longer available.

The entry into force on 1 January 2017 of the Automatic Exchange of Information regarding financial accounts in tax matters (AEOI) has affected voluntary disclosures: the Federal Tax Administration estimates that tax-related items covered by the AEOI will be available to the Administration by 30 September 2018 at the latest, so that disclosure will no longer be considered as voluntary as from that date. Regarding tax-related items subject to the AEOI that will emerge after 2017, and tax-related items coming from countries that will apply the AEOI subsequently, this rule will apply by analogy as of 30 September of the year during which the exchange of related information takes place for the first time.

PERSPECTIVES

Voluntary disclosure allows avoiding penalties, limiting to interest on late payments as well as (deductible) tax reminders for a maximum of 10 years (or three years in the case of taxable items voluntarily disclosed by the heirs of a deceased person). This is a particularly interesting path for taxpayers who have failed to declare their assets located outside Switzerland. Income tax implications on interest deductibility, of wealth tax on the deductibility of debt, and generally speaking, on the effective tax rate, further reinforce its attractiveness. Conversely, litigation with the tax authorities may lead to heavy fines, often equivalent to the evaded tax (for a first offence), as well as to criminal prosecutions. Taxpayers who might be concerned by tax elements covered under the AEOI should without fail consider undertaking a voluntary disclosure before 30 September 2018 in order to avoid any inconveniences caused by tax reminder proceedings.

Contacts: Michel Abt and Thomas Romailler

THE NEW STATUS OF NON-RESIDENTS OF FRANCE IN TERMS OF REAL ESTATE TAX

With the entry into force in France of the Real Estate Tax (RET), the tax situation of non-residents may change considerably.

The abrogation of the Solidarity Tax on Wealth (STW), effective 1 January 2018, and its replacement by an exclusive tax on immovable assets, the Real Estate Tax (RET), seem at a first glance to offer only advantages. If this conclusion is mainly true for French residents, such is not the case for non-residents, and particularly for those **domiciled in countries that do not have a wealth tax treaty with France.** Such is the case notably for, but not limited to, residents of Belgium, Portugal and England (but also of Brazil, Australia or even Denmark).

It should be remembered that under the STW, non-residents could be exempted in France for immovable assets held, indirectly, in the following cases :

- holding less than 10% shares in a **French company** not qualifying as a company investing predominantly in real estate (a company whose assets consisted of less than 50% of immovable property situated in France) ;
- holding less than 50% shares in a **foreign company** not qualifying as a company investing predominantly in real estate (even if the company held property in France) ;
- holding more than 50% shares in a **foreign company** not qualifying as a company investing predominantly in real estate, even if the company held property in France, provided that this property was assigned to its own business activities.

Under the STW, in case of holding an immovable asset under the guise of companies, **the concept of real estate predominance was therefore crucial.** This is no longer the case since the entry into force of the RET. Indeed, under the second paragraph of new article 965 of the General Tax Code, non-residents are henceforth taxable on the units and shares of French or foreign companies up to a representative portion of the property held in France, directly or indirectly.

In view of this paradigm shift established by the RET, non-resident investors may find their tax situation considerably changed. Hence, they run the risk of being taxable in France under the RET in proportion to their holdings – whatever the percentage – in a French or foreign company, once the company holds, even indirectly, real estate situated in France and not assigned to its business activities. However, there is limited risk of taxation for operational companies holding real estate directly or indirectly, since in this case the non-resident is taxable only for holdings exceeding 10%.

PERSPECTIVES

Replacing the concept of preponderance of real estate by the concept of indirect **holding of real estate** *has an effect only on residents of countries not having a wealth tax treaty with France. Indeed, residents of treaty countries, in most cases, are protected by the provisions of tax treaties, as they very often refer to the concept of preponderance of real estate (even if this concept must be assessed solely on the basis of French assets). Such is the case, namely, for treaties signed with Germany, Canada, Russia, Israel and Switzerland.*

For residents of non-treaty countries, it is imperative that their situation on 1 January 2018 be audited under the new provisions in order to determine whether the scope of their rights and obligations has been modified under this new and complex legislation.

The situation for Swiss residents subject to lump-sum taxation requires special attention, as the French tax authority has stated in 2012 its inclination to refuse them the benefit of the French-Swiss treaty, in which case they may find themselves taxable in connection with immovable assets situated in France held indirectly by companies (Swiss, French or foreign) which are indeed not investing predominantly in real estate and in which these residents are sometimes minority shareholders.

Furthermore, for all non-residents, just as for residents, the financing structure that has been set up should be analysed. As a matter of fact, and more than for the residents, non-residents were offered financing solutions quite different from French banking practices (namely allocated and depreciable property loans). It is quite common that the acquisition of an immovable property in France by a non-resident is financed by a loan called «lombard», renewable yearly, or by a short term bullet loan (for example five years). The new debt deductibility provision significantly toughens the inclusion of these financing structures, and may durably increase the fiscal cost of the investment. Surprisingly, this tough legislation aims at indebtedness realized by

the taxpayer himself, and not at the liability base of an intermediary holding structure, giving all the importance it deserves to pre-acquisition structuring.

On another issue, and in order to protect foreign investments realised in France through Listed Real Estate Investment Companies (LREIC), the legislature has expressly exempted from the RET investments made under these structures, but with a 5% holding limit. It must also be noted that a specific exemption mechanism is applicable to investments made in an investment fund or collective investment fund (provided that the latter does not hold more than 20% of their assets in immovable property taxable under the RET).

It should also be specified that those taxable under the RET who are non-residents and not established in the European Economic Area, will be required to appoint a tax representative in France (under penalty of automatic taxation).

Finally, the exemption regime for « impatriates », already applicable under the STW, remains within the RET and therefore enables a taxpayer residing in France to have his immovable assets situated abroad exempted under certain conditions, for five years.

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REVISED FINMA CIRCULAR ON OUTSOURCING: WHAT NEW ELEMENTS FOR FINANCIAL INSTITUTIONS?

On 5 December 2017, the FINMA finally published its new and entirely revised Circular on Outsourcing which will henceforth be applicable to banks, securities dealers and insurers (hereafter the « institution(s) » or « company(ies) »).

The very principle of outsourcing and the requirements to be complied with in the future remain fundamentally similar to those in force till now. Subject to certain exceptions, institutions retain the right to outsource their significant functions without authorisation from the FINMA as long as the principles laid down by the supervisory authority are respected. The FINMA Circular 2018/3, effective 1 April 2018, which replaces the Circular 2008/7, is, however, different in part from the preliminary draft that the FINMA had submitted for consultation and introduces some new elements for companies, namely regarding the outsourcing agreement. In addition, companies remain liable to the FINMA for outsourced activities as they would if they themselves carried out these activities.

The following new elements should be pointed out.

- **Definition of significant function** – The FINMA defines « significant function » as any function on which the achievement of objectives and the requirements of the legislation on financial market supervision depend significantly. Taking into consideration criticism from some institutions, the FINMA eliminated all reference to types of risks. Furthermore, it no longer provides examples, in spite of some criticism in this respect. Each institution has the responsibility of judging whether the function to be outsourced falls within the scope of the Circular. It can, however, be concluded that, in spite of different wording used in the Circular, the authority's practice must be taken into account in institutions' self-evaluation.
- **Deletion of all references to the protection of data and to bank secrecy** – The new Circular no longer contains references to bank secrecy and to data protection. These matters are henceforth exclusively governed by the Federal Law on Banks and the Federal Act on Data protection respectively.
- **Inventory of outsourced functions** – From now on, institutions are required to establish and keep an inventory of the functions being outsourced. The aim is to allow a better view of the portfolio of the outsourced function in case of restructuring or liquidation of the company. The inventory should in any case contain a description of the outsourced function, as well as the name of the service provider (and of its possible sub-contractor), the service recipient and the unit responsible within the outsourcing company.
- **Minimum content of the outsourcing agreement** – The company should adapt the agreement so that it contains as a minimum the clauses prescribed by the FINMA, that is, 1. the right to instruct and to monitor the service provider; 2. the requirement regarding

security and business continuity; 3. the right to subject the outsourced function to continuous monitoring by the company, by its audit firm and by the FINMA; 4. making available to the FINMA by the service provider, not subject to the supervision of the latter, all documents and information relating to the field(s) of activities transferred; 5. requirement of prior approval in case of using a sub-contractor; 6, and, for outsourcing to another country, the guarantee that the company, its audit firm and the FINMA may exercise their right to monitor and to examine; and 7. that necessary information about restructuring or liquidation of the outsourcing company is available from Switzerland at any time.

– **Some other new elements** – In particular, there is the obligation to consider the concentration risk when choosing the service provider, the guarantee of an orderly reinstatement of the outsourced function and the obligation to guarantee the restructuring and liquidation capacity of the company in Switzerland.
– Finally, it is interesting to note that when the supervisory authority had submitted its draft, it intended to impose identical requirements on companies regardless of whether the outsourcing was carried on within a group or with external third parties, considering that intra-group outsourcing carried as much risk as external outsourcing, if not greater. In the consultation procedure, the FINMA was subject to the criticism that the equivalence of requirements was considered to be disproportionate. In the final version of the Circular, the FINMA states that intra-group outsourcing continues to benefit from a simplified regime if it can be shown that the outsourcing is risk-free, that some requirements are irrelevant or that they are regulated otherwise.

PERSPECTIVES

The revised Circular became effective on 1 April 2018. The right for institutions to outsource significant functions has not, in itself, fundamentally changed but contains some new elements which require companies to keep an inventory of the functions outsourced and to review their outsourcing agreements to ensure that they contain the minimum clauses required by the FINMA. Finally, it is recommended that companies review their internal authorization procedure for outsourcing.

For any outsourcing set up after 1 April 2018, the requirements under Circular 2018/3 will be applicable immediately. For existing outsourcing, companies have a transitional period – extended by the FINMA following the consultation – of five years.

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TAX EFFECT ON THE DEVOLUTION OF WEALTH FOLLOWING A SUCCESSION FOR LEGAL ENTITIES TAXED IN SWITZERLAND

The Federal Court (FC) recently considered the question whether cantonal inheritance tax, levied from a company inheriting from a succession, a legacy or a donation, was deductible with regard to tax on the profit of legal entities ; in this respect, the FC is also examining the interpretation to be given to the rule according to which an increase in wealth deriving from a succession does not fall within the taxable profit of a legal entity. This subject is very important in the context of family-owned companies. These issues have henceforth been resolved by the FC in a judgement of 30 November 2017.

In the present case, a limited company inherited real estate assets from its deceased shareholder. The value of these assets (CHF 50 million) was accounted for by the said company by recording an extraordinary gain equivalent to this value in its 2012 accounts. Assuming that inheritance tax is deductible, it then set aside a provision of CHF 18 million for the inheritance tax (hence to be deducted from the amount accounted for as extraordinary gain). The corporate taxpayer finally again deducted in its accounts the total value of the inheritance (above-mentioned CHF 50 million) from the small profit recorded during year 2012 (CHF 50’000), on the claim acknowledged by Swiss tax law, as indicated below, that the increase in the company’s wealth (which results in an extraordinary accounting gain) arising for example from an inheritance, does not constitute a taxable profit. Following these accounting operations, the company’s financial statements for 2012 showed a loss of CHF 17’950’000 (plus CHF 50 million, less CHF 18 million, plus CHF 50’000, less CHF 50 million, i.e. a loss of CHF 17’950’000). The company did not pay any tax on profit for the year 2012.

The following year, in 2013, the corporate taxpayer made a commercial profit of CHF 2 million. In its 2013 tax return, it again claimed the deductibility of the losses brought forward from the previous year (CHF 17’950’000) in order, again, to allow a zero tax on profit.

The Cantonal Tax Authority and the lower courts rejected this approach and relied on the net profit for year 2013 (CHF 2 million) for taxation. The FC confirmed this conclusion.

In the first part of its ruling, the FC reached the conclusion that cantonal inheritance tax does fall into the categories listed in article 59 para. 1 let. a of the Law on Direct Federal Tax (LDFT), and that they therefore represent « tax-deductible items justified by commercial use » within the meaning of that provision. In other words, inheritance tax falls within the scope of this LDFT provision and is hence deductible. A provision made for this purpose in the accounts was thus justified.

Furthermore, under article 60 let. c of the LDFT, an « increase in wealth derived from a succession » does not constitute a taxable profit. This provision makes it possible

for the corporate taxpayer to reduce – from a tax standpoint – the extraordinary gain caused by an increase in its wealth derived from an inheritance.

In that respect, and in the second part of its ruling, the FC analysed the interpretation of the terms «increase in wealth» contained in article 60 let. c LDFT. After the analysis, the FC determined that «the increase in wealth» to be taken into account is in fact the *net* increase in wealth resulting from the succession, that is, the value of the estate inherited by the company *after deducting the inheritance tax* to be paid on the said estate distribution. Any other approach would enable the company to deduct *twice* the inheritance tax, which the FC refuses to authorize: inheritance tax can be deducted only once.

By proceeding thus, the company concerned by the FC's decision had effectively tried to deduct a second time (in 2013 – through the deduction of the brought forward losses) the inheritance tax from the taxable profit, which the FC rejected. Therefore, the company must pay tax on commercial profit realized during year 2013, without the possibility of deducting the amount of losses brought forward resulting from the «double» deduction of the inheritance tax.

PERSPECTIVES

If the FC's decision may disappoint those who saw the allocation of estate to a legal entity as a tax optimisation tool in connection with the deduction of inheritance tax, it has at least the advantage of clarifying the legal situation, and establishing predictable rules in respect of tax effect to an inheritance by a legal entity.

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