FRANCE BLACKLISTS THE BRITISH VIRGIN ISLANDS, JERSEY AND BERMUDA

All British Virgin Islands, Jersey and Bermuda companies with French assets (particularly French property) and all French Tax Residents should take notice of the tax effects

A. Blacklisting

On the 21st August 2013, France decreed that with effect from 1 January 2014, the British Virgin Islands, Jersey, and Bermuda will be placed on its list of un-cooperative states for tax purposes. This sudden move by France was without warning to any of the jurisdictions, and appears unusual given that the countries have signed tax information exchange agreements with France.

B. Tax Consequence

The consequences of the blacklisting will be disastrous for some tax payers with the salient effects noted below:

- The capital gains tax on property sales is increased from 33.3 per cent to 75 per cent for residents of a blacklisted country. French social charges will also be payable by individual (non-company) sellers, resulting in an effective rate of over 90 per cent.
- If a French company owns 50 per cent or more in an entity established in a blacklisted country it must pay corporation tax in France on that entity's profits.
- If a French individual owns 10 per cent or more in an entity (including a trust) established in a blacklisted country the individual is taxed on the income arising in the entity.
- French companies receiving dividends from subsidiaries in a blacklisted country do not receive the usual corporation tax exemptions.
- French tax advantages for individuals who have purchased a French investment product known as "assurance-vie" are withdrawn if the beneficiary is resident in a non-cooperating state and the tax rate is 75%.
- Dividends paid by French companies to non-residents are subject to a withholding tax at 21 per cent (subject to tax treaties). If the person is resident in a non-cooperating state it is increased to 75%.
- Income paid by a French resident to a person abroad including for sports services, is usually subject to a withholding of 33% or in some cases 15% buy payments to persons resident in non-cooperating countries will now be subject to a 75% withholding.

- Interest, royalties and some other payments by individuals and companies in France to entities in these jurisdictions are not deductible for French tax unless there is no intent to obtain a tax advantage.

- Where a trust is settled by a French resident in a blacklisted country, the trust assets will incur 60 per cent inheritance tax on the Settlor's death no matter what happens to the trust assets. One must bear in mind that trusts are transparent for tax purposes in France with effect from 2011. All offshore trustees were required to report to the French tax authorities on the market value of the worldwide trust assets as at January 1 each year if a trust has a French tax resident Settlor, even where the Settlor is an excluded beneficiary and regardless whether any benefit has been paid out. If all the original Settlors have died, any French tax resident beneficiaries become "deemed Settlors". If a trust has any French assets they must be reported, even if there are no French resident Settlors or deemed Settlors.

The British Virgin Islands authorities are already actively working to have this decision reversed before its effective date of 1 January 2014, British Virgin Islands' Premier Orlando Smith has stated that "Steps are being taken to correct things perceived to be wrong, which will be easily accomplished, so that the BVI's should not be negatively affected." However, given the wide-ranging tax impact, trustees and company directors based in the British Virgin Islands, Jersey and Bermuda with French investments or French shareholders and beneficiaries should proceed to review their position without delay.