



The French tests of tax residence (some observations)

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In various decisions dated 27 January 2010 and 12 and 17 March 2010, the Supreme Court provided interesting detail in respect of two of the French tests of tax residence.

Broadly speaking, under Article 4 B of the French Tax Code ("FTC"), an individual can be regarded as a French tax resident if, in any tax year, he meets **any one** of the following criteria:

- He has his *foyer* (or family home) in France or, if a *foyer* cannot be determined, he has his principal place of abode in France;
- He exercises a professional activity in France, be it salaried or not, unless he can prove that this activity is ancillary to his main occupation elsewhere;
- He has his centre of economic interests in France.

The Supreme Court decisions concern the *foyer* and the centre of economic interests tests of tax residence.

The *foyer* in France

The *foyer* is usually defined as the place where the family (ie spouse and minor children) habitually lives (ie where the family interests are based). The residence of the taxpayer's family constitutes his *foyer* even if he spends most of his time abroad. Indeed, the mere presence of the taxpayer's immediate family in France can be enough for him to be regarded as French tax resident. But recent decisions have extended and clarified the criteria which must be used to determine the location of a *foyer* in France.

Should the cohabiting partner be considered?

In a case dated 27 January 2010, the Supreme Court ruled that a taxpayer who carried out his professional activity in Guinea, but made regular trips to France to see his cohabiting partner with whom he had a son, should be viewed as having his *foyer* in France within the meaning of Article 4 B of the FTC. Previously, it was considered that the *foyer* referred to the location of the taxpayer's spouse and children. But now a cohabiting partner is equated to a spouse when determining the location of the *foyer* within the meaning of Article 4 B.

How should separated couples be treated?

In a decision of 17 March 2010, the Supreme Court confirmed, with regard to a taxpayer who is married but not legally separated from his wife, that a de facto separation breaks the links with the *foyer*. A taxpayer living abroad who is separated but not divorced from his wife in France should not therefore be considered French tax resident with regard to the *foyer* test, provided that the separation is effective (in this context, proof of the real situation is going to play an important role).

How to deal with single taxpayers?

Since the *foyer* is defined as the place where the immediate family lives (ie spouse and children), then, by extension, a single taxpayer has no *foyer*. At least, this has been the view usually taken in the past.

However, in a case dated 12 March 2010, the Supreme Court had the opportunity of clarifying the situation of single taxpayers regarding the *foyer* test. The Court ruled that the *foyer* in the case of a single, childless taxpayer was the place where the taxpayer lived, had his friends and spent his leisure time (ie where his personal life was centred). A single taxpayer can therefore have a *foyer* under French tax legislation.

Interestingly, in the same case, the Court of Appeal had taken close family members (ie parents, brothers and sisters) to determine this taxpayer's *foyer*. However, on appeal, the Supreme Court confirmed that the *foyer* of a taxpayer comprises, strictly speaking, his spouse (and now his cohabiting partner) and any eventual children but does not include close family members. In the case of a single taxpayer therefore, who has no spouse or children (or cohabiting partner), the *foyer* will **not** be determined by the place where his parents, brothers and sisters live but rather by the place where his personal life is centred.

The centre of economic interests in France

The centre of economic interests is defined as the place where the taxpayer has made his principal investments, or where his business affairs are based, or where he manages his assets, or where he receives most of his income.

In a decision of 27 April 2010 the Supreme Court considered that a person who received substantial professional income in Greece but only owned non-income generating assets in France (notably properties) does not have his centre of economic interests in France within the meaning of Article 4 B.

This decision confirms the interpretation accepted until now that a taxpayer can only be regarded as French tax resident if he has assets in France which generate most of his income. One can own valuable assets in France without being treated as French tax resident under this test if the assets do not generate income or generate little income in proportion to the taxpayer's other income (ie in comparison to other foreign income). The Supreme Court confirms that in order to determine the centre of economic interests of the taxpayer, a comparison must first be made between income received in France and income received abroad.

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