



French Wealth Tax on French real estate owned through foreign companies

June 2010

In a decision of 19 January 2010, the Supreme Court "Cour de Cassation" ruled on the wealth tax regime in respect of French real estate owned by non French residents through foreign companies.

This decision reminds us that ownership of French real estate through one or more foreign company(ies) does not, in all cases, avoid liability to wealth tax in France.

Indeed, unless there is a Double Tax Treaty ("DTT") preventing France from imposing tax (and in fact such DTTs are rare) French real estate held through companies is still subject to wealth tax. In fact, to be more precise, it is not the property itself which is subject to wealth tax but the shares of the ultimate company owning it, assuming, of course, the net value of these shares exceeds the wealth tax threshold (ie €790,000 for 2010).

The facts of this case

The taxpayer was tax resident in Saudi Arabia.

He owned 99% of the shares in two Luxembourg companies (A and B). These two companies respectively owned 90% and 10% of the shares of another company (C) which owned two chalets in the French mountains.

The taxpayer also owned 99% of the shares in a third Luxembourg company (X) which owned 100% of the capital of another company (Y) which owned 100% of a further company (Z) which owned a property in Paris.

Initially, the taxpayer had declared the shares held in the three Luxembourg companies and paid wealth tax on them in France.

However, he later took the view that under the DTT between France and Saudi Arabia of 18 February 1982, these shares should not have been declared, and he made a claim to the French tax authorities for reimbursement of the wealth tax he had paid.

However, the French tax authorities took a different view and the case went through the courts and finally went to the Supreme Court.

As is often the case with DTTs signed by France, article 14 A of the Franco-Saudi DTT provides that shares or other rights in a company whose assets are mainly made up (more than 50%) of real estate or rights in real estate, are treated as immovable assets for the application of the DTT.

Consequently, insofar as the assets of the Luxembourg companies mainly consisted of rights over real estate (ie shares in companies directly or indirectly owning French real estate) the tax authorities took the view that these shares should be assimilated to French situs property and consequently be subject to French wealth tax.

Arguments put forward by the taxpayer

The taxpayer used various arguments and in particular he argued that the shares in the Luxembourg companies could not be treated as real estate as the assets of these companies did not directly

consist of French property but of company shares. As the Luxembourg companies did not directly own French real estate, their assets could not be assimilated to immovable assets.

The Court's decision

The decision reached by the Court is not surprising.

To assess whether a foreign (or even French) company can be assimilated to a real estate holding company, one must not only take into account real estate held directly by this company but also that owned indirectly through other companies. If the assets of a company consist of more than 50% of such assets or rights (ie shares in companies owning immovable assets) the shares of the company can be assimilated to real estate.

Therefore, as more than 50% of the assets of the three Luxembourg companies constituted French real estate, these companies could be assimilated to property holding companies. They were therefore liable to French tax.

Comments

This solution is not new. For wealth tax purposes (in the same way as for the 3% tax) the chain of participation and indirect ownerships are taken into account to determine whether a foreign company's shares can be assimilated to French real estate which is taxable in France.

The taxpayer in question should therefore have declared the value of the shares of the three Luxembourg companies on his wealth tax declaration (as he had done previously).

However, he could have escaped wealth tax if he had owned certain types of financial assets in France. In this respect the French tax legislation provides a list of eligible investments for exemption which comprise in particular shares in quoted French companies.

Indeed, as with the DTTs signed by France with Bahrain, the United Arab Emirates, Kuwait and Qatar, the DTT between France and Saudi Arabia provides exemption from French wealth tax on real estate owned in France (directly or indirectly) if the taxpayer also owns certain types of French financial assets which are of greater value than the real estate.

If the financial assets are worth more than the real estate, the taxpayer is exempt from French wealth tax on the real estate. Furthermore, as non French tax residents are normally exempt from wealth tax on French financial investments, this provision can avoid the payment of wealth tax on all assets owned in France.

Nevertheless not all financial assets are eligible and ownership of financial assets in France can have other tax consequences, notably in respect of income tax. Care should therefore be taken with regard to the type of investments made. Further, it should be noted that certain types of financial investments made in an EU country can also be eligible for French wealth tax exemption on French real estate.

For further information, please contact:

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