



efc briefing

legal and fiscal

November 26th 2009 - Ref: befc0976 - Email: eu@efc.be

France about to remove discrimination of foreign based charities

Outline

The French Government has in November 2009 published an amending law to the 2009 budget law, which includes proposals to remove discrimination against foreign charities in two areas: tax relief for cross-border donations and withholding tax on dividends, see <http://www.fonds-dotation.fr/index.php/Actualites/Fiscalite-integration-des-arrets-Persche-et-Stauffer-et-adiou-Beauguitte.html>.

The first proposal will give relief from income tax and net wealth tax to donors to public benefit organisations established in the EEA that are comparable to French public benefit organisations. The proposal provides that the tax advantages would be granted with respect to gifts made to organisations established in the EEA in countries in two cases:

- The country has signed a tax treaty with France containing a clause for assistance against tax fraud or evasion provided such organisations obtain a specific agreement from the French tax authorities.
- In the case where the organisation has not got this agreement, the donors may still benefit from the tax advantages provided that they file evidence that the organisation is comparable to a French tax exempt organisation. Details will be refined in a forthcoming application decree.

This French suggestion follows recent law revisions in other EU Member States such as Luxembourg, Bulgaria, Slovenia, Poland, Finland, Denmark, The Netherlands, which have recently introduced the tax deductibility of cross-border donations if they are given to “comparable” organisations.

The French law proposal also suggests a new system of taxation of dividends. It will introduce a 15%-rate instead of the existing 10%-rate or total exemption for most public benefit organisations. French source dividends will now be taxed at the same 15% rate for charities established in France and an EU or EEA member state provided it has a tax assistance treaty with France.

Some specific French public benefit organisations will remain fully exempt from dividend taxation such as foundations which are recognised as being of public utility. It will have to be clarified whether this full exemption could also apply to comparable foreign based public benefit organisations – the law proposal does not provide for that.

The French government did over the past year get some pressure from the European Commission. Only this November 20th, the European Commission has sent a "reasoned opinion" to France (2nd step of the infringement procedure laid down in Article 226 of the EC Treaty) to amend its tax law on taxation of donations to foreign public interest bodies as well as dividend tax and transfer duties on donations. If France does not agree to amend its legislation within the two months following the Commission's letter, the Commission may decide to refer the matter to the European Court of Justice, see press-release available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1764&format=HTML&aged=0&language=EN&guiLanguage=en>

The above described draft law proposal would however appear to satisfy the European Commission as it removes the tax discrimination of foreign based public benefit organizations. The European Commission press-release (IP/09/1764) states that France grants tax deductions to donors only for donations or contributions paid to not-for-profit bodies carrying out their activity in France. In addition French tax legislation currently in force lays down a system of exemptions for public bodies,

public-interest bodies based in France and not-for-profit bodies carrying out their activities in France from dividend tax and transfer duties on donations and bequests. By contrast, similar bodies established or active in the other EU and EEA Member States are subject to tax at 60% of the value of the donations or bequests received (calculated net of an allowance of € 1 520). However, by way of exception, some bilateral agreements entered into by France allow for the application of these tax advantages on a reciprocal basis.

According to Court of Justice case-law (particularly the judgment in Persche , C-318/07 of 27 January 2009), the different tax regimes for donations to French bodies and those to foreign bodies constitute an unjustifiable barrier to the free movement of capital. The reference numbers for the procedures initiated by the Commission are 2006/5003, 2007/4203 and 2007/4823.

France is in good company. By the end of 2009 the European Commission reported on 19 pending and 11 closed procedures launched by the EC to request various Member States to bring their national tax laws in line with the EC-Treaty. The procedures question discriminatory national tax provisions for individual donors and corporate donors as well as of foreign based public benefit organisations. For press releases concerning infringement procedures in the area of taxation and customs, please visit (not all pending cases have reached the public domain):

http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/index_en.htm

For further information on infringement procedures against the Member States, please visit:

http://ec.europa.eu/community_law/infringements/infringements_en.htm

It is likely that the infringement procedure against France will stop should the European Commission consider that the French law proposal brings French tax law in line with the EC-Treaty.

Action Point

The EFC will continue to keep its members informed about future foundation law developments. For more information, please contact: eu@efc.be