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France – More Jurisdictions Added to "Black List" of Non-Cooperating Countries

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The French Minister of Economy and Finance and the Minister of the Budget published a Ministerial Order ("arrêté") on 21 August 2013, amending the list of so-called "Non-Cooperative States or Territories."[1] Due to issues concerning insufficient cooperation on tax information exchange matters, residents of such territories will be subject to punitive taxation under French tax rules introduced in 2010.

The updated list was published in the French Official Journal (*Journal Officiel*) dated 28 August 2013, and now includes Jersey, the British Virgin Islands, and Bermuda,[2] while the Philippines is removed.

Although the new additions have concluded agreements providing for administrative assistance, France considers that they are not cooperating sufficiently with its tax administration and that it cannot obtain the necessary information that would allow French tax legislation to apply.

Residents of such territories will be subject to increased taxation, and in particular:

- A 75-percent withholding tax rate on French sourced interest, dividends, or life insurance pay-outs (this also applies where such income is paid via a bank account located in such a territory even where the investor is a resident of a state considered as cooperative).
- A 75-percent tax rate on the capital gain arising on the sale of real estate based in France.
- A withholding tax rate of 75 percent on the acquisition gains of stock options and restricted stock units (RSUs).

The new classification will have an impact on French tax residents who hold an in interest in a structure established or incorporated in a country with a preferential tax regime as the 10-percent threshold required for the application of the rules will be presumed to be met. This allows the French tax authorities to tax the income arising in the structure even though it is not distributed.

The restrictive provisions take effect on 1 January of the year in which the territory or state is added to the list. This means that for Jersey, the British Virgin Islands, and Bermuda, the rules will apply from 1 January 2014.

The rules stop applying from 1 January of the year of removal from the list. For the Philippines, the restrictive measures will not apply for the year 2013.

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FIDAL Note

Investors will need to review their transactions and investment structures. French companies and funds will have to identify their investors located in Jersey, the British Virgin Islands, and Bermuda.

Footnotes:

1 See: http://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=23F3EEC76408A47F7F6F77D40F017F8D.tpdjo15v_2?idArticle=JORFARTI000027899729&cidTexte=JORFTEXT000027899726&dateTexte=29990101&categorieLien=id .

2 Guatemala, Niue, Brunei, Marshall Islands, Montserrat, Nauru, and Botswana are already on the list.

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The information contained in this newsletter was submitted by FIDAL Direction Internationale in France. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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