

40 rue François 1^{er}
75008 Paris
FRANCE

Tél. +33 1 85 09 91 30
Fax. +33 1 85 09 92 30

arkwood.fr

OPPORTUNITY – SEPTEMBER 2018

TAX CLAIM OPPORTUNITY REGARDING FRENCH WEALTH TAX (“ISF”)

SUMMARY

The administrative doctrine relating to the anti-optimization rule provided for in article 885 T ter of the French Tax Code is doubtless unlawful regarding the shares valuation methods for shareholders who are not tax-resident of France.

Non-resident taxpayers who have declared and payed their ISF by following the administrative doctrine have an interest in filing a tax claim requesting the recalculation of their ISF for the years 2016 and 2017.

Article 885 T ter of the FTC, an anti-optimization provision raising questions about its application

In view of the fact that non-resident individuals shareholders of French companies having predominant real estate activities (“SPI”) could reduce the value of their shares included in the ISF taxable base by financing the company by means of current account contributions, the French Legislator provided an anti-optimization provision codified in article 885 T ter of the French Tax Code. This instrument allowed the exclusion of debts owed to non-resident shareholders for the valuation of the shares they held in a French SPI.

The administrative doctrine is are probably unlawful

The administrative doctrine interpreted this provision by considering that each non-resident shareholder of a French SPI had to reinstate, for the determination of the value of his taxable participation in the ISF, all the debts held by non-resident shareholders.

The interpretation given by the tax authorities appears excessively broad and does not take into account the particular situation of each non-resident taxpayer. Therefore, it is probably illegal.

Non-resident taxpayers who have computed their ISF by following the administrative instructions have therefore an interest in filing a tax claim requesting the recalculation of their ISF and the refund of the overpayment. Claims submitted before the end of 2018 may relate to the ISF paid for the years 2016 and 2017.

This provision raises other delicate issues

This instrument also raises other delicate legal issues:

- Should Article 885 T ter also apply when current account financing was established for non-tax reasons?
- Was the administration grounded in applying Article 885 T ter even though companies in the detention chain had set up the financing of the French company, without going up to the non-resident taxpayer?

In these situations, it also seems to us that the concerned taxpayers have every interest in challenging the position of the tax authorities and requesting the recalculation of their ISF.

We remain at your disposal for any request for assistance in the context of claims procedures.

ARKWOOD TEAM