

## TAX ALERT

**TERMINATION OF THE DOUBLE TAX TREATY SIGNED BETWEEN  
FRANCE AND DENMARK ON FEBRUARY 8, 1957**

*MARCH 2009*

## SUMMARY:

The France – Denmark Double Tax treaty has been terminated on June 10, 2008 by the Danish Tax authorities with effect on January 1<sup>st</sup> 2009. As a result, France and Denmark recover the full applicability of their respective domestic tax law, increasing the potential exposure to double taxation.

For Danish residents (either individual or company) operating a business in France or receiving French source income, the following consequences will occur as of January 1<sup>st</sup> 2009.

Please note that an administrative guideline is currently discussed in France between the business associations and will be issued in the coming weeks. This administrative guideline confirms the full application of French domestic law, particularly the different withholding taxes.

Therefore, it is highly recommended to take some actions in order to circumvent some of these consequences.

## 1. TERRITORIALITY

### 1.1 Income tax

Under French tax law, French residents are taxed on their worldwide income as resulting from the aggregate of all income items, and subject to progressive income tax (Article 4 A of the French Tax Code – “FTC”). Income tax paid in Denmark may be deducted from the French taxable income.

Under the provisions of the FTC (Article 4 B) a person is deemed to be a French resident if this person has in France a home or principal abode, performs non ancillary employment or independent services or has in France the centre of his economic interests.

Therefore, Danish citizens residing in France (e.g. pensioners) or working in France may qualify as French residents and be taxable on their worldwide income.

### 1.2 Corporate income tax

The French corporate income tax is based on a strict territoriality principle, meaning that this tax is levied only on business income derived by enterprises carried on in France, notwithstanding the State of residence of the latter. An enterprise is deemed to be carried on in France if it is generated through a permanent establishment, a “full commercial circle” or a dependent agent.

## 2. BUSINESS PROFITS

### 2.1 PES

The notion of permanent establishment will be appraised by reference to the French Domestic law. In this regard, the French notion of permanent establishment (Article 209-I of the FTC differs from the notion as defined in Article 2 paragraph 3 of the terminated France – Denmark Double Tax Treaty. Whereas the French tax law is in line with the treaty definition of autonomous business and independent agent, it enlarges the application of a permanent establishment on the so-called “complete commercial cycle”.

### 2.2 Income from services

Services paid by a French resident to a Danish service provider will be subject to a 33% withholding tax (“WT”), according to article 182 B of the FTC. Such withholding tax could however be partially or totally refund, on the basis of the EU principles.

## 3. INTEREST, DIVIDEND ROYALTIES

The French withholding tax shall apply with no limitations but those set up by European Directives:

- Dividends paid by a French distributing company to a Danish resident shall be subject to a French WT at the rate of 25%, unless exempt under the parent-subsidiary dividends Directive;
- Interest from French sources paid to a Danish resident shall be subject to a WT of 18%, unless exempt under the interest and royalties Directive;
- Royalties paid by a French debtor to a Danish resident shall be subject to a French WT at the rate of 33%, unless exempt under the interest and royalties Directive;

## 4. REAL ESTATE INVESTMENTS IN FRANCE

The France – Denmark Double Tax Treaty offered possibilities of double dip for real estate investors (companies) that shall no longer exist.

## 4.1. Real estate income

As from January 1, 2009, income derived by Danish residents from real estate located in France may be subject to taxation in France under the standard provisions applicable to non-French residents. This entails, if the beneficiary is a Danish company, a taxation at the standard 33.33% CIT rate (in some cases, 50%).

## 4.2. Capital gains upon disposal of real estate assets

Capital gains upon disposal, by a Danish company, of real estate assets located in France will also be subject to 33.33% taxation in France, according to article 244 *bis* A of the FTC.

## 4.3. Capital gains upon disposal of shares held in real estate companies

Such taxation occurs no matter whether the sale is performed through an asset deal, or through a share deal (a reduced 19% rate may apply for disposal of shares held by a Danish company in listed French real estate companies), according to article 244 *bis* B of the FTC.

# 5. INCOME FROM EMPLOYMENT AND PENSIONS

## 5.1 Territoriality

Income from employment and pensions derived by French residents is subject to French income tax notwithstanding the source country, i.e. the country where the employment services are rendered or the country of payment of the pension income (taxation of worldwide income).

Income from employment and pensions derived by Danish residents is taxable in France only if the source country is France, i.e. if the employment services are rendered in France or if the country of payment of the pension income is France.

## 5.2 Taxation

Income from employment and pensions derived by Danish citizens qualifying as French residents is subject to French progressive income tax. No withholding tax applies.

Income from employment and pensions derived by non residents are subject to a special withholding tax to be levied by the employer or the pension fund.

## 6. ACTIONS TO BE TAKEN

*Companies and individuals having interests in France shall take into consideration the tax consequences of the recent termination of the Franco-Danish Tax Treaty, and take advantage of EU provisions in order to limit, possibly avoid through different modalities new taxation deriving from the absence of double tax treaty protection.*

*In particular, it could be envisaged, if sound business reasons are existing, to:*

- *Amend the bank and/or intra-group financing,*
- *Review the participation chain in order to avoid the application of French withholding tax,*
- *Review the intangible organisation,*
- *File claim under EU Law to be refunded of withholding tax paid in France,*
- *Secure the non existence of a permanent establishment through appropriate ruling*

The Mazars' and Marccus Partners' Tax Team in France stay at your full disposal for any information you may need.

Sincerely yours,

Jacques-Henry de Bourmont

E-mail : [jh.debourmont@marccuspartners.com](mailto:jh.debourmont@marccuspartners.com)

Tel. : + 33 1 53 53 02 80

## TAX TEAM

**Jacques-Henry de Bourmont** - [jh.debourmont@marccuspartners.com](mailto:jh.debourmont@marccuspartners.com)

**Christophe Billet** - [christophe.billet@marccuspartners.com](mailto:christophe.billet@marccuspartners.com)

**Xavier Casal** - [xavier.casal@marccuspartners.com](mailto:xavier.casal@marccuspartners.com)

**Etienne Durieux** - [etienne.durieux@marccuspartners.com](mailto:etienne.durieux@marccuspartners.com)

**Philippe Gambini** - [philippe.gambini@marccuspartners.com](mailto:philippe.gambini@marccuspartners.com)

**Gilles Gasné** - [gilles.gasne@marccuspartners.com](mailto:gilles.gasne@marccuspartners.com)

**Patrick Glebocki** - [patrick.glebocki@marccuspartners.com](mailto:patrick.glebocki@marccuspartners.com)

**Constance Loubeyre** - [constance.loubeyre@marccuspartners.com](mailto:constance.loubeyre@marccuspartners.com)

**Guillaume Rubechi (French Desk Frankfurt a.M.)** - [guillaume.rubechi@marccuspartners.com](mailto:guillaume.rubechi@marccuspartners.com)

**Mathieu Selva-Roudon** - [mathieu.selva-roudon@marccuspartners.com](mailto:mathieu.selva-roudon@marccuspartners.com)