

Friday 26th August, 2012

SCIs and Member's loans (*comptes courants d'associés*) : French Wealth Tax changes from 1st January, 2012.

The *Société Civile Immobilière* or SCI has provided a French quasi-corporate vehicle for owning French residential and commercial property for a long time.

It is one of the types of companies referred to generically as a *société à prépondérance immobilière*, which means any unlisted company, French or foreign, whose assets consist of more than 50% of immovable property or immovable property rights, which includes indirect immovable holdings through other companies as well.

The funding of an acquisition of property and improvements has been done historically in one of two ways:

- a. A full capitalisation, which has been generally favoured by notaries in most circumstances; or
- b. A part capitalisation, and part member's loan finance (by *compte courant d'associé*)

Given the incidence of the Estate Duty Treaty between France and the United Kingdom, the British domiciliaries' advised preference has generally been for the second option, as there is a French succession duty saving available. However, that is a different tax to Wealth tax.

The valuation of the SCI is generally that of the underlying market value of the property, less a discount for its status as a quasi-company, which functions rather more as a partnership, to take account of the fact that its parts are not transferable otherwise than by agreement by the other members. However, where the SCI is financed by member's loans, a reduced net balance sheet evaluation has been employed by some taxpayers.

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The *loi de finances rectificative pour 2011* has technically altered the treatment of member's loans to *sociétés à prépondérance immobilières* (SCIs, Sarls etc.) by in effect, disallowing their deduction from the balance sheet value of the société to determine the value of its "parts" or members' rights. The law uses the existing concept of a *société à prépondérance immobilière* to determine the scope of application of the new article 885 T ter :

Article 40

I. – *La section 5 du chapitre Ier bis du titre IV de la première partie du livre Ier du même code est complétée par un article 885 T ter ainsi rédigé :*

« Art. 885 T ter. – *Les créances détenues, directement ou par l'intermédiaire d'une ou plusieurs sociétés interposées, par des personnes n'ayant pas leur domicile fiscal en France, sur une société à prépondérance immobilière mentionnée au 2° du I de l'article 726, ne sont pas déduites pour la détermination de la valeur des parts que ces personnes détiennent dans la société. »*

II. – *Le I s'applique à l'impôt de solidarité sur la fortune dû à compter de l'année 2012.*

The modification takes effect as from 1st January, 2012, in other words in respect of the ISF declaration to be filed in 2012.

The *compte courant* itself remains an exempt financial instrument for non-residents for ISF purposes, but it is no longer taken into account for the purposes of ISF valuation of the *parts*. It will still be a French situs asset for succession duty purposes as a debt owed by a French company, saving the British Estate duty Treaty exception. In other words its treatment for one tax is not the same as in another tax of the same French category.

The term *créance* is used, which means that the aim is not simply to deal with tax reductions through any *compte courant* held by a Member directly, but also those obtained by indirect holdings of the debt by the member through interposed companies. It does not specifically address loans from trusts, which are not sociétés, and which, depending on their proper law, may or may not escape the article.

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The point to bear in mind is that this is a specific technical change; it is not a universal anti-avoidance mechanism. Its application extends not only to *Sociétés de personnes*, but also to any French unquoted company whether *translucide*, opaque or otherwise, whose assets principally consist of French immovable property. It can therefore also apply to *Sociétés anonymes* and other French hybrid companies limited by shares.

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