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Tuesday, 30<sup>th</sup> April, 2013

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## Summary of ISF, rates and declaration dates for 2013

### ❖ Introduction

L'impôt de solidarité sur la fortune (« ISF ») is an annual tax due by individuals.

Where the individual taxpayer is resident in France, the ISF, generally referred to as Wealth tax is due on all their assets, within or outside France when the total value of their net fortune (*patrimoine*) exceeds the lower limit of the first taxable tranche. For 2013, this is €1.300.000<sup>1</sup>.

When the taxpayer is resident in France, and also has assets abroad, they can benefit from a credit for foreign taxes equivalent to wealth tax paid on those assets abroad. These have a separate section in the declaration process which generally requires advice.

When the resident taxpayer has resided in France for less than five full tax years preceding the year of assessment in question (fiscal = calendar years), they are not liable to ISF on their non-French assets.

For non residents and recent immigrants, the definition therefore of what is a French situs asset and what is not is therefore crucial, as is the allocation of the situs of debts.

Where the taxpayer is resident outside France, they are taxable on their French situs assets, and on their French or related debts. However a recent change has meant that where a French debt relates to or has been used to purchase an exempt or a foreign, therefore non taxable, asset, the debt may not be allowable. The localisation of debts in this situation needs careful attention as does the manner in which they are evidenced and their purpose.

**Trusts**: The question of whether a taxpayer has an interest in taking assets held in trust for them, or which they have settled or constituted, into their own personal ISF return needs careful attention, as the trustees are generally subject to a levy at the highest rate of the ISF tariff (1.5%) on the full value of the trust fund:

1. on the entirety of the trust assets in the case of a French resident Constituant or beneficiary, if the beneficiary is entitled, and also

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<sup>1</sup> However, once the net value exceeds €1.300.000, the tax applies from €800.000, at a rate of 0.5%, increasing to 0.7% etc on the second tranche which starts at €1.300.000; see table below for the whole set of rates.

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2. where the relevant taxpayer is not resident in France but French assets are held in trust.

The tax administration have confirmed that the trustees of a French resident taxpayer who has moved to France within the five years preceding the year of assessment is not affected by the Trust levy, insofar as the trustees hold foreign situs assets. The Trustees are dispensed from payment of the annual levy, equivalent to ISF. However, as the Trustees will have had to make a declaration of the trust's existence on the taxpayers' move to France, for gift and estate duty purposes, the administration will have been advised of the individual's position.

It can therefore be less expensive, and more transparent, for the beneficiary or settlor to make a declaration as if the assets were their own, once the 5 year period of grace has ended. Advice here is essential, and timing important, as, if the declaration date for individuals is missed, then the liability will remain with the trustees, who in any event are subject to a stringent set of compliance declarations, both as to the existence of the trust, and as to a levy (*prélèvement*), set at the highest ISF rate. No penalty will be due by the taxpayer, provided that the trustee makes the appropriate declaration and payment in time.

Trustees, settlors and beneficiaries should seek advice from a competent adviser as to the question of beneficial entitlement and residential status of beneficiaries/*constituants* (Settlors) and also ensure complete coordination with Beneficiaries, *constituants* or Settlors in this area. The deeming provisions concerned are complicated and frequently give results with which a foreign Trustee may not be familiar. These matters are still not fully commented upon by the administration, and it is essential to define the ground and the trust's "being" from the outset rather than having its effect and aims misinterpreted by a tax inspector, who is not necessarily aware or for that matter favourably inclined to the type of trust in question.

As ISF is calculated by reference to a *foyer fiscal*, (a French tax term meaning a fiscal household unit), married couples, irrespective of their matrimonial property régime, file a joint declaration grouping all of their assets and debts. Care needs to be taken in the case of foreign couples where one only owns the asset in France. A joint return is also required of those living under a PACS or equivalent foreign civil partnership, or in the old style *concubins notaries*.

Under article 885 E of the French Code général des impôts, the ISF base comprises « *la valeur nette, au 1er janvier de l'année considérée, de l'ensemble des biens, droits et valeurs imposables* ». a declaration of debts, strictly evidenced, is therefore also a part of the declaration of wealth.

## ❖ ISF in 2013

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The rates and tranches of the tax were completely rewritten for the second time in two years with effect from **1st January, 2013**, resulting in a greater charge on taxpayers than those of the Sarkozy changes in 2011. However it has not entirely reverted to its 2010 format.

The payment of ISF is triggered now, in 2013, when net wealth exceeds €1.300.000 on 1<sup>st</sup> January, 2013. However where the threshold is triggered, then the tax applies to the net assets as from €800.000. The net value between €800.000 and €1.300.000 is taxed at the lowest rate of 0.5%, see below for further details.

In calculating whether the chargeable wealth exceeds € 1.300.000, under [article 885 A](#) of the *Code général des impôts*, the following assets are taken into account for individuals:

- for tax residents in France, on the net value of their assets either within or outside France. However, individuals who have been resident in France for less than 5 full tax years preceding the 1<sup>st</sup> January of the tax year concerned ;
- for non-residents, on the net value of their assets situated in France, subject to relevant French situs debts.
- The trust levy or *prélèvement*, equivalent to ISF is not actually the same tax, as it is deliberately anti-trust.

#### ❖ Declaration dates for ISF in 2013

##### Taxpayers with net taxable wealth between 1.3 and 2.57 million Euros

These taxpayers do not have to file the specific ISF return n° 2725, but rather a specific income tax form n°2042C, either on paper, or on-line.

However, where the tax payer is non-resident and does not have French source taxable income they have to file the paper 2725 ISF form and pay the tax before Midnight Monday 2<sup>nd</sup> September, 2013. It is only where the taxpayer has French source income that the declaration can be combined with the income tax return and that only for net French wealth between €1.300.000 and €2.570.000.

The main difference with the Wealth tax declaration filed in 2012 is that, where a non-resident has French source income, which he may declare on-line, there is a slightly later filing date than the standard income tax declaration date:

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- a. Where the non-resident, with French source income, lives in Europe, Africa, North America, or in a littoral state of the Mediterranean, the paper or online income tax declaration with the ISF details, is to be filed by Midnight, Monday 17<sup>th</sup> June, 2013; and
- b. When the non-resident lives in Central or South America, in Asia in Oceania, or any other State, the paper or online income tax declaration with the ISF details is to be filed by Midnight, Monday 1<sup>st</sup> July, 2013

If filing the income tax return, these taxpayers are not required to file either ISF form n° 2725, or the supporting evidentiary documentation. However, the tax administration retains the right to require either explanation or submission of evidence of these items.

In any event, if the income tax return is submitted, the tax payment does not need to accompany the form, as it does with the ISF declaration immediately, but only as part of the income tax collection procedure, notified to the taxpayer prior to but payable by 16<sup>th</sup> September, 2013.

For income tax payers, resident or non-resident with French source income, the ISF due on net wealth within the lower range of €1.3 million to €2.57 million is therefore declared on the supplemental Income tax form n°2042C, under the same timetable as for income tax returns, and paid at the latest by 16<sup>th</sup> September, 2013:

- **by Midnight, Monday 27th May 2013, for the paper declaration.**
- **If by on-line filing, before :**
  - Midnight , Monday 3rd June, 2013 for taxpayers living in French « départements » numbered **from** 01 à 19
  - Midnight, Friday 7th June, 2013 for taxpayers living in French « départements » numbered **from** 20 à 49 (including the two Corsican departments)
  - Midnight Tuesday 11<sup>th</sup> June, 2013 for taxpayers living in French « départements » numbered **from** 50 à 974.
- **For non-residents :**

**If** they have no French source income, these have to file a specific ISF paper form n° n°2725, before **Midnight, Monday 2<sup>nd</sup> September, 2013**, and pay the tax.

It is only if they have French source income that they have to file an income tax return n° 2042C either on paper or on-line, prior to :

  - **Midnight, Monday 17 June, 2013**, if resident in Europe, in any state on the Mediterranean littoral, Africa or Northern (not Central) America;
  - **Midnight, Monday 1st July, 2013** if resident elsewhere in the World.

In the latter two cases, i.e. where they have French source income and declare it, they do not have to pay the ISF with the declaration, but await the notification of tax payable at

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the same time as their income tax assessment, payable at the latest before 16<sup>th</sup> September, 2013

### Taxpayers whose net taxable Wealth is € 2.57 million or over

These taxpayers, whether resident or non-resident have to file ISF form n°2725. For 2013, this formality, accompanied by a self assessed payment, has to be done at the latest by:

- Midnight **17<sup>th</sup> June, 2013** for those resident in **France**,
- Midnight **15<sup>th</sup> July, 2013** for those resident in **Monaco** (with the *service des impôts des particuliers* at Menton),
- Midnight **2<sup>nd</sup> September, 2013** for those resident abroad (with the *Service des impôts des particuliers non résidents*, at Noisy le Grand).

### Where the declaration is filed by the heirs of a deceased ISF taxpayer

If a taxpayer liable to ISF dies in 2013 before the filing date to which they are subject:

- When the deceased's net taxable wealth is equal to or over € 2,57 million, the declaration has to be filed within **six months** of their decease;
- When the net taxable wealth lies between €1.3 million and €2.57 million, the date remains that for the income tax declaration.

If he or she dies in 2013, after their 2013 declaration date:

- When the deceased's net taxable wealth is greater or equal to €2,57 million, , the declaration has to be filed within **six months** of their decease ;
- When their net taxable wealth is between €1.3 million and €2.57 million, the declaration date, already passed, is not affected by the decease.

### ❖ Payment dates for ISF 2013

The dates depend upon the net taxable wealth of the taxpayer. **For all taxpayers whose net taxable Wealth is:**

- Between **€1,3 million** and **€2,57 million**, the payment is made at the latest for those with French taxable income, at the latest by **16<sup>th</sup> September 2013** (on reception of the payment notice at the end of August) ;

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- For those with net taxable wealth equal or superior to **€2,57 million, and all non-resident taxpayers without French taxable income** ; payment is due with the filing of the declaration ; that is :
  - for info, for a French resident taxpayer **Midnight 17<sup>th</sup> June, 2013** ;
  - for those resident in Monaco, by **Midnight 15<sup>th</sup> July, 2013** ;
  - for those resident elsewhere, by **Midnight 2<sup>nd</sup> September 2013**.

#### ❖ ISF rates 2013

Impôt de solidarité sur la fortune	
Net taxable Wealth Brackets	Rate
Less than € 800.000	0%
Above €800.000 and less than or equal to € 1.300.000	0,50%
Above €1.300.000 and less than or equal to € 2.570.000	0,70%
Above € 2.570.000 and less than or equal to € 5.000.000	1,00%
Above € 5.000.000 and less than or equal to € 10.000.000	1,25%
Portion over € 10.000.000	1,50%

#### ❖ Discount (“*Plafonnement*”)for net wealth between € 1.3 million and € 1.4 million

A discount mechanism smooths the tax entry for taxpayers whose net wealth falls between €1.300.000 and € 1.400.000.

The amount of tax calculated under the above table is reduced by a sum equal to € 17.500 - 1.25% P, where P is the net taxable value of the wealth.

However, the allowance for persons « à charge », children and students has been removed.

#### ❖ Consolidation of the ISF Tax base

The new version of [article 885 G quater](#) CGI, changes the rules for the deduction of liabilities. It removes the possibility for taxpayers to deduct from the value of taxable assets; debts contracted for the acquisition of or related to assets which are not included in the ISF tax basis or which are exempt.

For the taxpayers concerned, this measure limits the deduction of debts to those related to taxable assets. The manner in which this may affect non-residents with foreign loans used to acquire French non exempt assets.

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❖ **ISF ceiling for taxpayers resident in France.**

The ceiling, only available for French resident taxpayers, is defined at [article 885 V bis](#) CGI, which provides that the French resident taxpayer's ISF is reduced by the difference between:

- On the one hand, the total of income tax due in France and abroad on income and « *produits* » for the prior tax year, calculated before any tax credits for foreign tax or withholding abroad;
- And, on the other hand, 75% of the total worldwide income less professional expenses of the prior tax year, after deduction only of the categorised deficits whose setting off is authorised by article 156 CGI, as well as income exempted from income tax and « *produits* » subject to a final withholding either in France or abroad in the preceding tax year.

Note that this summary does not address finer points of planning in certain areas, particularly trusts and other structures, and should not be relied upon as advice. Please speak to Peter Harris for such advice and assistance.

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