JERSEY FINANCE

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The Tax Information Exchange Agreement signed with France in Paris on Monday 23rd March, 2009.

- Context: within OECD and EU
  - French position in both organisations
- Ratification, and entry into force
- French domestic tax law hierarchy, where and how does it fit?
- The advantages for the Island and the Finance Industry:
  - The Fund industry;
  - The Trust and Corporate Administration industry;
  - Lawyers, accountants and other professionals.

- Joint Questions

- 16.30 – 16.50 : Time 20 minutes

French TIEA :
Its context within the EU and OECD

- EU: Savings Directive and Tax harmonisation
  - ➢ Where do the French taxes fit?
  - ➢ How has France managed recovery of taxes outside the strict scope of EU tax competence through the Mutual Assistance Directive?
- OECD
  - ➢ OECD TIEA template not necessarily full square with French internal tax system: *e.g.* 3% annual tax.
  - ➢ France has chair of Peer Review Committee

French TIEA :

Ratification, and entry into force

- Signed by Both Parties in March 2009:
  - Ratified by Jersey in July 2009.
  - Ratification expected by France last half 2010.
  - Entry into force one month after exchange of instruments.
- Jersey is not on 2010 *article 238-0 A Liste Noire* of *ETNCs*:
  - Thanks to signature pre 31st December 2009 and French internal transitional measures;
  - However advantages only flow from Entry into Force.

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French TIEA :

French domestic tax law hierarchy.

- Article 22 of *loi de Finances rectificative 2009* introduces *article 238-0 A Code Général des Impôts:* notion of *Etat ou Térritoire Non-Cooperatif (ETNC)*.
- A TIEA, an administrative assistance agreement, lifts the cooperative jurisdiction into a more favourable but more compliance based tax window, with less extortionate withholding tax rates and exemptions *(compares well with non-discrimination clauses)*;
- The TIEA will be a superior heirarchical norm at the Constitutional level to legislation, decrees and general *doctrine administrative.* However:
  - less effective than a DTA, which can modify CGI;
  - the *Ministre* de finances can remove benefit annually, after consultation with *Ministère des affaires étrangères* subject without doubt to an appeal.

Note French constitutional protection and ECHR principle of non – expropriation by State. Taxation is a strictly construed exception to that principle.

French TIEA :

The advantages for the Island and the Finance Industry

- Transparent Offshore Funds with tax treaty efficiency for Treaty residents using Diebold Courtage instruction:
  - Not all tax treaties can work here.
- France only has *FCPs* or *FCP à risque*; not as effective as a transparent limited partnership in a treaty context. Administratively complex, but can be worthwhile for expert funds and similar;
- 3% annual tax exemption and other issues: client should now be able to opt to pay and remain anonymous, or to apply for exemption or undertaking and disclose.

French TIEA :

Some issues arising

I. France and Italy have introduced a concept that a trust is an *entité juridique* with direct economic rights *qua* a company, which as a concept of the Jersey and British laws of property, it is not;

II. Jersey Norman law concepts can be introduced with greater certainty into international financing structures: *Usufruits* over shares; French *sociétés de personnes* share the same legal roots as Jersey partnerships.

III. Competent Authority: Information and tax recovery.

IV. Information on « Criminal » activity can be required on matters prior to entry into force, not on civil or administrative.

V. Independent issues: assessment of non-residents under article 164C CGI to French source income on 3 times annual rental income of property at disposal in France; similar idea to old UK Schedule A assessment.

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French TIEA :

- Summary :

- Questions :

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