France adds Bermuda, Jersey, and the BVI to list of non-cooperative states and territories

August 29, 2013

In detail

Every year the French government updates a 'black list' of jurisdictions (so-called non-cooperative states and territories, or NCSTs) that do not apply international standards with respect to exchanges of tax information.

On August 28, 2013, the French government published a Ministerial Decree adding Bermuda, Jersey, and the British Virgin Islands (BVI) to its black list, while removing the Philippines. These changes are effective retroactively to January 1, 2013.

The updated list of NCSTs now includes Bermuda, Botswana, the British Virgin Islands, Brunei, Guatemala, Jersey, the Marshall Islands, Montserrat, Nauru, and Niue.

Transactions involving NCSTs are subject to stringent French tax measures with respect to controlled foreign corporations (CFCs), French withholding taxes, the French participation exemption regime, capital gains treatment, deductibility of expenses, and transfer pricing documentation obligations. These measures, which are designed to discourage transactions involving NCSTs, include:

- Additional transfer pricing documentation obligations for a French entity with transactions involving NCSTs
- More stringent CFC rules applicable to CFCs located in an NCST
- Inapplicability of the French participation exemption regime for dividends paid by a company located in an NCST to a French parent, and for capital gains realized by a French company upon the transfer of shares in a company located in an NCST
- Nondeductibility of most expenses related to payments accrued or made to an entity in an NCST (notably interest), and
- Application of a 75% withholding tax on most payments – including interest, dividends, royalties, services, and capital gains -- made by a French entity to an entity in an NCST.

The inclusion of Bermuda, Jersey, and the BVI on the black list effective January 1, 2013, will affect transactions made with entities in these territories beginning January 1, 2014. This delay gives the newly designated NCSTs time to respond to the designation by providing an unrestricted exchange of information in line with French requirements. The delay also gives entities or businesses time to exit those NSCTs or revisit transactions involving them.

The takeaway

US groups with French subsidiaries engaging in transactions with entities in the new NCSTs should immediately review the potential impact of the French tax measures that will apply to these transactions as of January 1, 2014, and consider changes to their current structures and operations before that date.

Let's talk

For a deeper discussion, please contact:

International Tax Services, United States

Guillaume Glon
+1 (646) 471-8240
g.glon@us.pwc.com

Guillaume Barbier
+1 (646) 471-5278
g.barbier@us.pwc.com