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Article : **Definition of residence for those couples and households where one is not resident in France, and the income tax advantages.**

20th January, 2014.

This is not intended to be professional tax advice, however copyright and intellectual property are reserved in it, and any individual needing advice on this should contact Peter for further information and assistance.

Whilst this is of significant interest for those individuals who are resident in Jersey, but whose spouses and children are resident in France, it is of general application.

Since the concept of *chef de famille* or head of household was removed from the Code Général des Impôts, the definition of the fiscal *foyer* has been of less extensive application.

The administration's doctrinal documentation at http://bofip.impots.gouv.fr/bofip/1911-PGP/version/1?branch=redaction&identifiant=BOI-IR-CHAMP-10-20120912 , provides an insight into this slight but significant differential of treatment with those fiscal *foyers* whose members are both domiciled in France. The same rules apply to those non-married couples under what is known as a PACS or *pacte civil de solidarité*.

The principle is that where one of the spouses or *Pacsés* is resident in France, the couple are in principle subject to common taxation; irrespective of their nationality when one or other:

- has their *foyer* or place of principal residence in France ("lieu de son séjour principal") note that the second can only be used where the place of the *foyer* is in doubt as between two jurisdictions, it is not an alternative;
- or carries out a professional activity, whether salaried or not, unless they show that the activity is accessory to their main occupation elsewhere;
- or has the centre of his economic interests in France (N.B."*le centre de ses intérêts économiques*", not "*intérêts vitaux*").

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However that only applies to the obligation to file a joint return in France, it does not mean that the foreign source income of the non-resident spouse or partner is therefore taxed in France.

Where both spouses or partners are French resident, foreign source income or gains are taxable in France irrespective of whether they are remitted or not.

The French administration's *doctrine* is as follows:

The actual taxation is based upon the following principle, where one of the spouses or partners does not fall within these criteria - i.e. is non-resident under art 4B CGI - the tax liability of the household ("*ménage*", not "*foyer"* is limited to :

- all the revenues of the spouse or partner "*domicilié*" in France ; and only
- the French source revenues of the other (non-resident) spouse or partner (subject to extensions or restrictions of French taxing rights under international treaties); not their non-French source income.

In other words, foreign income of the non-resident spouse in principle is not to be carried to the couple's French income tax return. The fact that there may be a ménage or a partial foyer in, France, does not mean that the couple's entire world wide income and gains are thereby included in the French tax basis. However that individual has to be non-resident. It is that point hat needs strict attention: if the "non-resident" has indicia that render them resident under article 4B CGI, then their overseas income will be included in the French tax basis, and therefore taxed twice, without credit for foreign income tax paid.

This exceptional "carve-out" of the tax basis also applies to foreign source income and gains of non-resident children or other individuals "*en charge*", of the couple: only the non-resident's French source income or gains are included in the household's French income tax return. Not their foreign source income or gains

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However, although their foreign source income is excluded, the non-resident individuals are counted for the application of the quotient familial; the "*parts*" system, and therefore increase that significant advantage.

One important point, the existence of the foreign source income or gains of the non-resident partner doers not man that the resident partner's income and gains are subjected to the effective rate of tax that it would have been were the foreign source income to have been included; "*le taux effectif*". That particular régime is a an exceptional Tax Treaty and international civil servant régime, and has to be specifically directed at a given case. It therefore does not apply here.

It does mean that a French individual working in Jersey has to constitute a fiscal residence or foyer in the Island, and has to take great care over not returning to France for significant periods. In other words, care over all of the three criteria at article 4B CGI is needed.

The Wealth Tax ramifications of this principle are slightly different.

Now the French Conseil d'Etat has struck down the article 164C CGI deemed income assessment of three time annual rental value of French property owned by non-residents, any attempt to collect this as French source income, within the above household common assessment system should be vigourously resisted.

Consult Peter for advice, following the recent blacklisting scare and its removal on 17th January, 2014 as the local French administration, particularly Saint-Brieuc, will be checking those with Jersey connections.

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