Single Building Doesn't Create PE, French Court Finds

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A Luxembourg-based real estate investment fund that owned only one building in Paris, which it purchased to refurbish but could not with its own resources, lacked a permanent establishment and is thus exempt from corporate tax on gains from the building's sale under the France-Luxembourg tax treaty, a French administrative court has held.

The Administrative Court of Appeal of Paris issued its decision in *Cerep Imprimerie Sarl*, No. 15PA02628, December 14. (The decision is not available in English.) Cerep Imprimerie Sarl, whose registered office is in Luxembourg, was incorporated in France to acquire the Imprimerie Nationale (the National Print Office) building. French tax authorities concluded a tax audit of the company in April 2010 and determined that it had a PE in France and its liability for corporate income tax, social contributions, and the minimum contribution to business tax would be reassessed for the tax year ending in June 2008.

Cerep Imprimerie Sarl took ownership of the Paris building in January 2006 after purchasing it for €103 million. Cerep Imprimerie Sarl's de jure manager is Cerep Sarl, a Luxembourg company owned by the real estate investment fund Cerep LP. According to the court, Cerep Sarl regularly sets up wholly owned companies dedicated to single real estate investments, which have no personnel and use the resources of their managers. This allows Cerep Sarl to limit the risks specific to each investment and obtain project loans more easily. The company carried out significant renovation of the building and resold it to the French government for €325 million in June 2007.

After examining the evidence, the court determined that Cerep Imprimerie Sarl performed its activities as a property developer from its registered office in Luxembourg. It noted that the company had an agreement with Sarl Créa France to provide services in France, but that the French company lacked the resources to carry out the renovation project on its own. Therefore, under the terms of the France-Luxembourg tax treaty, Cerep Imprimerie Sarl lacked a PE in France, the court found. (1970 protocol; 2006 protocol; 2009 protocol; 2014 protocol.)

At the time of the events in the case, the courts in France and Luxembourg took different views of their countries' tax treaty regarding gains on French real estate, Philippe Derouin, a Paris-based attorney who represented Cerep Imprimerie Sarl, told Tax Analysts. The effect of the differing views, Derouin said, was that gains on French real estate realized by a corporation based in Luxembourg were exempt from tax in both countries, except when there was a French PE. The French tax authorities claimed that Cerep Imprimerie Sarl had a PE in France as a result of the services rendered by Sarl Créa France, he explained.